Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

**APPENDIX**

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1978

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**No. 78-1840**

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CITY OF ROME, BRUCE HAMLER, and
H. F. HUNTER, JR., *Appellants,*

v.

UNITED STATES OF AMERICA, GRIFFIN B. BELL,
Attorney General of the United States, and
DREW S. DAYS III, Assistant Attorney General
of the United States, *Appellees.*

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**On Appeal From the United States District Court for the District of Columbia**

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**JURISDICTIONAL STATEMENT FILED JUNE 7, 1979**

**JURISDICTION NOTED JULY 2, 1979**

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

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Statutes

Sections 4 and 5 of the Voting Rights Act of 1975 appear beginning on page 1c of Appellants' Jurisdictional Statement.

Georgia Code Ann. Sections 34A-102, 34A-902, 34A-1407 (1970) appear beginning page 1d of Appellants' Jurisdictional Statement.

Georgia Laws 1966, pp. 2375-2378, 2382-2386, 2815-2819, 3083-3087; Georgia Laws 1967, pp. 3296-3298; Georgia Laws 1970, pp. 2563-2566; Georgia Laws 1971, pp. 3664-3666 appear beginning on page 1e of Appellants' Jurisdictional Statement.



Opinions

Opinion of the Three-Judge District Court below, City of Rome, et al. v. United States, et al., 450 E. Supp. 378 (D.D.C. 1978) appears beginning on page 1a of Appellants' Jurisdictional Statement.

Opinion of Three-Judge Court below, City of Rome, et al. v. United States, et al., CA 77-0797 (D.D.C. April 9, 1979), together with the Court's Order of April 4, 1979, appears in Appellants' Jurisdictional Statement beginning on page 1b.

Appellants' Notice of Appeal received on May 2, 1979 appears in Appellants' Jurisdictional Statement beginning on page 1f.

## CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

May 9, 1977--Plaintiffs' complaint.

May 9, 1977--Application by Plaintiffs for three judge court.

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July 12, 1977--Motion by Defendants to dismiss and request for oral hearing.

Sept. 23, 1977--Memorandum of law by Plaintiffs in opposition to Defendants' motion to dismiss.

Oct. 28, 1977--Motion of Defendants to dismiss heard and taken under advisement.

Nov. 10, 1977--Amended complaint of Plaintiffs.

Nov. 21, 1977--Answer of Defendants to amended complaint.

Nov. 21, 1977--Motion of Defendants to dismiss.

Dec. 7, 1977--First request of Plaintiffs for admission of facts and genuineness of documents.

Dec. 7, 1977--First request of Plaintiffs for production of documents and things by Defendants.

Dec. 7, 1977--First interrogatories of Plaintiffs to Defendants.

Dec. 14, 1977--First stipulation of facts of Plaintiffs and Defendants.

Dec. 28, 1977--Supplement of Plaintiffs to first amended complaint.

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Jan. 11, 1978--Response of Defendants to Plaintiffs' first request for admission of facts and genuineness of documents.

Jan. 11, 1978--Supplemental stipulation of facts of parties.

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Jan. 24, 1978--Response by Defendants to Plaintiffs' second interrogatories.

Jan. 24, 1978--Interrogatories by Defendants to Plaintiffs.

Jan. 25, 1978--Motion of Defendants for a protective order to prevent the taking of the deposition of Frederick J. McGrath.

Jan. 31, 1978--Answer of Defendants to Plaintiffs' supplemental complaint.

Jan. 31, 1978--Motion of Plaintiffs to compel discovery.

Feb. 3, 1978--Response of Plaintiffs to Defendants' motion of extension of time.

Feb. 7, 1978--Motion of Plaintiffs for order that facts be taken as established.

Feb. 7, 1978--Response of Defendants to Plaintiffs' second request for production of documents and things.

Feb. 10, 1978--Response of Defendants to motion for order that facts be taken as established.

Feb. 10, 1978--Response of Defendants to motion to compel discovery.

Feb. 15, 1978--Amendment of Plaintiffs to motion to compel discovery.

Feb. 23, 1978--Memorandum and order granting Defendants' motion to dismiss Count V of the amended complaint, etc.

Feb. 24, 1978--Deposition of Donald Jackson.

Feb. 24, 1978--Deposition of C. W. Aycock.

Feb. 27, 1978--Deposition of Joe Wright.

Feb. 28, 1978--Amended response of Defendants to Plaintiffs' first request for admission of facts and genuineness of documents.

Mar. 7, 1978--Motion by Plaintiffs for reconsideration of this court's order of Feb 22, 1978.

Mar. 10, 1978--Amended response of Defendants to paragraph 16 of Plaintiffs' first set of interrogatories.

Mar. 13, 1978--Affidavits in support of pending motion for summary judgment and for all other proper purposes.

Mar. 13, 1978--Answers of Plaintiffs to Defendants' interrogatories.

Mar. 13, 1978--Third interrogatories of Plaintiffs.

Mar. 13, 1978--Third request of Plaintiffs to Defendants for production of documents and things.

Mar. 14, 1978--Requests of Defendants for admission of facts and genuineness of documents.

Mar. 14, 1978--Memorandum of Defendants to accompany filing of affidavits; affidavit of James W. Loewen; affidavit of John K. Tanner; affidavit of Harry Johnson, Jr.

Mar. 15, 1978--Affidavit of Mrs. Ray Beard in support of pending motion for summary judgment.



Mar. 15, 1978--Affidavit of Harry Johnson in support of pending motion for summary judgment.

Mar. 15, 1978--Answers of Plaintiffs to Defendants' interrogatories.

Mar. 31, 1978--Deposition of Horace Clary.

Mar. 31, 1978--Deposition of Bruce Hamler.

Apr. 3, 1978--Deposition of H. F. Hunter, Jr.

Apr. 3, 1978--Deposition of David Harvey.

Apr. 3., 1978--Deposition of Leon Wade.

Apr. 7, 1978--Responses of Plaintiffs to Defendants' requests for admission of facts and genuineness of documents.

Apr. 10, 1978--Deposition of Elgin Carmichael.

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Apr. 10, 1978--Deposition of Edwin Tanner.

Apr. 10, 1978--Deposition of Napoleon Fielder.

Apr. 10, 1978--Deposition of Rev. Clyde Hill.

Apr. 10, 1978--Deposition of E. J. Thomas, Jr.

Apr. 10, 1978--Deposition of Curtis W. Moreland.

Apr. 10, 1978--Deposition of James G. Wright.

Apr. 14, 1978--Response of Defandants to Plaintiffs' third request for production of documents and things.

Apr. 14, 1978--Response of Defendants to Plaintiffs' third interrogatories; affidavit of Carmen L. Jones

Apr. 17, 1978--Second supplement of Plaintiffs to first amended complaint.

Apr. 17, 1978--Affidavit of John M. Nanos in support of Plaintiffs' motion for summary judgment.

Apr. 18, 1978--Second motion of Plaintiffs to compel discovery together with memorandum of points and authorities.

Apr. 18, 1978--Copies of Hearings before Committee of House of Representatives on Extension of the Voting Rights Act submitted by Plaintiffs for inclusion in the record and consideration by the Court in support of Plaintiffs' motion for summary judgment and in opposition of Defendants' motion for summary judgment and for all other purposes.

Apr. 18, 1978--Deposition of John K. Tanner.

Apr. 18, 1978--Deposition of James W. Loewen.

Apr. 18, 1978--Status call wherein each side was ordered to file motion for summary judgment by May 8, 1978 with response by May 15, 1978.

Apr. 19, 1978--Report by all parties to the court on status of discovery.

Apr. 19, 1978--Second supplement to parties stipulation of facts.

Apr. 21, 1978--Response of Defendants to Plaintiffs' second supplement to their first amended complaint.

May 8, 1978--Motion of Plaintiff City of Rome and its officials for partial summary judgment.

May 8, 1978--Motion of private Plaintiffs for partial summary judgment.

May 15, 1978--Reply of Plaintiffs to statement of Defendants of material facts as to which Defendants contend there is no genuine issue.

May 15, 1978--Response of Plaintiffs to the Defendants' motion for summary judgment.



May 15, 1978--Response of Defendants to Plaintiffs' motion for summary judgment.

July 7, 1978--Cross-motions for summary judgment heard and taken under advisement.

July 12, 1978--Motion of Plaintiffs to file post argument brief.

July 12, 1978--Order directing the counsel for each party to prepare and file with the court six (6) copies of proposed findings of fact and conclusions of law within 10 days; directing each counsel to underline the proposed findings of fact and conclusions of law using a color code and file six marked copies of opposing counsel's proposed findings of fact and conclusions of law with the court within 10 days after receipt.

July 14, 1978--Motion of Defendants for extension of time to July 28, 1978 to file proposed findings of fact and conclusions of law.

July 18, 1978--Post-argument brief of Plaintiffs.

July 18, 1978--Response of Plaintiffs to Defendants' motion for extension of time.

July 24, 1978--Order filed July 20, 1978 extending time for all parties to file proposed findings of fact and conclusions of law until July 28, 1978.

July 28, 1978--Proposed findings of fact and conclusions of law of Plaintiffs.

July 28, 1978--Proposed findings of fact and conclusions of law of Defendants.

Aug. 8, 1978--Response of Defendants to Plaintiffs' proposed findings of fact and conclusions of law.

Aug. 10, 1978--Response of Plaintiffs to Defendants' proposed findings of fact and conclusions of law.

Jan. 15, 1979--Motion of Plaintiffs for interim relief.

Jan. 15, 1979--Motion of Plaintiff City of Rome in parens patriae for interim relief.

Jan. 29, 1979--Response of Defendants to Plaintiffs' motion for interim relief.

Feb. 5, 1979--Reply by Plaintiffs to Defendants' response.

Apr. 6, 1979--Order and opinion filed Apr. 4, 1979 granting Plaintiffs' motion for summary judgment on the transfer of voter registration to Floyd County; granting Defendants' motion for summary judgment on Counts I, II, III, and IV of Plaintiffs' amended complaint; granting Defendants' motion for summary judgment on Count VI of Plaintiffs' amended complaint, without prejudice; dismissing case without prejudice.

May 2, 1979--Notice of appeal by Plaintiffs.



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

| | | |
|---|---|---|
| CITY OF ROME, BRUCE HAMLER & H. F. HUNTER, Jr. | : | |
| Plaintiffs | : | |
| v. | : | CIVIL ACTION |
| THE UNITED STATES OF AMERICA, GRIFFIN B. BELL, ATTORNEY GENERAL OF THE UNITED STATES and DREW S. DAY III, ASSISTANT ATTORNEY GENERAL OF THE UNITED STATES, | : | NO. 77-0797 |
| Defendants. | : | |

PLAINTIFFS' FIRST AMENDED COMPLAINT
FOR DECLARATORY JUDGMENT
FILED NOVEMBER 10, 1977

Come now the Plaintiffs, City of Rome, Bruce Hamler, in his official and his individual capacity, and H. F. Hunter, Jr., in his official and individual capacity, and, pursuant to the order of this Honorable Court of October 31, 1977, file this their First Amended Complaint and respectfully show the Court as follows:

## ALLEGATIONS WITH RESPECT TO PARTIES AND JURISDICTION

1.

City of Rome, one of the Plaintiffs herein, is a municipal corporation and political subdivision of the State of Georgia, established by act of the Georgia General Assembly. City of Rome is not, however, a political subdivision within the meaning of the Voting Rights Act of 1965, (hereinafter referred to as the "Voting Rights Act"). City of Rome brings this action as a political subdivision of the State of Georgia and on behalf of its citizens in parens patriae.

2.

Plaintiff Bruce Hamler is City Manager of the City of Rome and resides in the City of Rome, where he is a duly registered voter. He brings this action both as City manager and as an individual citizen of Rome.

3.

Plaintiff H. F. Hunter, Jr. is Chairman of the Rome City Commission and resides in the City of Rome, where he is a duly registered voter. He brings this action both as Chairman of the Rome City Commission and as an individual citizen of Rome.

4.

Defendant Griffin B. Bell (succeeding Edward Levi) is Attorney General of the United States, (hereinafter referred to as the "Attorney General"), who is charged with certain responsibilities pursuant to Section 5 of the Voting



Rights Act of 1965, as amended, 42 USC 1973c, (hereinafter sometimes referred to as "Section 5").

5.

Defendant Drew S. Days, III (succeeding J. Stanley Pottinger) is Assistant Attorney General of the United States, Civil Rights Division, (hereinafter referred to as the "Assistant Attorney General"), to whom Defendant Bell has delegated his aforesaid responsibilities pursuant to Section 5 by way of regulations promulgated at 28 C.F.R. Sections 0.50 and 28 C.F.R. Part 51.

6.

This is an action for declaratory judgment pursuant to 28 USCA Section 2201 for the purposes of determining a question of actual controversy between the parties as hereinafter more fully appearing.

7.

This action arises under Article 4, Section 4 of the United States Constitution; under the First, Fifth, Ninth, Tenth and the Fifteenth Amendments to the United States Constitution; and under the Voting Rights Act of 1965, 42 USC Section 1973 et seq. Jurisdiction is based upon Sections 4, 5 and 14 of the Voting Rights Act, 42 USC Sections 1973b, 1973c and 1973L (b), and upon 28 USC Sections 1331, 1343(4), 1346 (a)(2).

8.

This action is one properly determinable by a district court of three judges, in accordance with Section 5 of the Voting Rights Act.

OPERATIVE FACTS

9.

Plaintiff City of Rome does not conduct registration for voting in elections for membership in the Rome City Commission or on the Rome Board of Education or registration for voting in any other primary or election, municipal or otherwise.

10.

Plaintiff City of Rome does not supervise registration for voting in elections for membership on the Rome City Commission or on the Rome Board of Education or registration for voting in any other primary or election, municipal or otherwise.

11.

No "test or device" as defined in Section 4 of the Voting Rights Act has been used within the City of Rome for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or otherwise, for at least seventeen years prior to the filing of this action.

12.

There is no history nor present existence of bloc-voting by race within the City of Rome.



13.

In 1968, the General Assembly of the State of Georgia passed an act known as the Georgia Municipal Election Code (Title 34A of the Code of Georgia of 1933). The said Election Code did, and does, apply to the City of Rome and took, and takes, precedence over the provisions of the Charter of the City of Rome.

14.

The Georgia Municipal Election Code was submitted to the United States Attorney General on May 13, 1968, and no objection thereto was interposed by him to Sections 34A-102 or 34A-1407(a) thereof.

15.

The said Election Code provides in Section 34A-102 thereof:

> "This Code shall apply to any general or special election in every municipal corporation of this State to fill any municipal office, and to any general or special municipal primary, if any, to nominate candidates for any such office, to any election to submit a question to the people, and to any other municipal election or primary for any other purpose whatsoever. Except as specifically provided in this Code, its provision shall take precedence over municipal charter provisions which are in conflict herewith."

16.

The said Election Code also provides, in Section 34A-1407(a) thereof:

> "If the municipal charter or ordinance, as now existing or as amended subsequent to the effective date of this Subsection, provides that a candidate may be nominated or elected by a plurality of the votes cast to fill such nomination or public office, such provision shall prevail. Otherwise, no candidate shall be nominated for public office in any primary or elected to public office in any election unless such candidate shall have received a majority of the votes cast to fill such nomination or public office."

17.

As of the effective date of the said Election Code, and subsection 34A-1407(a) thereof, the Charter of the City of Rome did not provide "that a candidate may be nominated or elected by a plurality of the votes cast to fill such nomination or public office."

18.

In 1918, the General Assembly of the State of Georgia passed an Act creating a new charter and municipal government for the City of Rome. (Georgia Laws 1918, pp. 813-885). The Act established as the governing and legislative body a commission of seven members, one from each ward of the City and elected by the consolidated vote of the entire city.



19.

By the same Act (Georgia Laws 1918, pp. 813-885), there was established a board of education, consisting of five (5) members from the City and elected at large.

20.

In 1929, two additional wards (the eighth and the ninth) were annexed into the City, and an election for an additional commissioner to represent each of said wards was provided for. In the initial election, each such commissioner was to be elected only by residents of each such ward respectively, and thereafter in the manner provided for existing commissioners, to-wit, at large.

21.

The General Assembly passed certain Acts in 1966, 1967, 1970 and 1971 which were concerned with the composition of the government of the City of Rome, with the Board of Education of said City and with certain local election procedures. All the acts were enacted at a time when the provisions of Section 5 were in effect.

22.

Georgia Laws 1966, pp. 2375-8 amended the Charter of the City of Rome (Ga. Laws 1918, p. 813) to provide for the offices of city commissioners as follows: One Commissioner from one of three posts in each of three wards, to be elected by a majority vote.

23.

Georgia Laws 1966, pp. 2379-82 amended the Charter of the City of Rome (Ga. Laws 1918, pp. 813-885, as amended by Ga. Laws 1929, pp. 1254-1276) to provide for the reduction in the number of wards from Nine (9) to three (3). The three wards consisted of three areas of practicably equal population divided and formed by the confluence of three rivers in the City.

24.

Georgia Laws 1966, pp. 2382-2386 amended the Charter of the City of Rome, (Ga. Laws 1918, pp. 813-885) to provide for the qualifications and salary of commissioners, for organization of the commission and for election by posts in each of three wards.

25.

Georgia Laws 1966, pp. 3069-3072 amended the Charter of the City of Rome (Ga. Laws 1918, pp. 813-885) to remove certain restrictions from voter qualifications.

26.

Georgia Laws 1966, pp. 2815-2819 amended the charter of the City of Rome (Ga. Laws 1918, pp. 813-885) to provide for a six-member city board of education and for the election of members to said board by posts with two posts for each of three wards, to be elected by a majority vote.



27.

Georgia Laws 1966, pp. 3083-3087 amended the Charter of the City of Rome (Ga. Laws 1918, pp. 813-885) to make provisions for the nomination of candidates in city elections and for the conduct of primaries and elections.

28.

Georgia Laws 1967, pp. 3296-3298, corrected a typographical error in Georgia Laws 1966, pp. 2375-2378.

29.

Georgia Laws 1970, pp. 2563-2566 amended the Charter of the City of Rome (Ga. Laws 1918, pp. 813-885, as amended by Ga. Laws 1966, p. 2375) to change the election date of city commissioner elections and to provide for conduct of run-off elections.

30.

Georgia Laws 1971, pp. 3664-3666 amended the Charter of the City of Rome (Ga. Laws 1966, p. 2815) to change the election date of City Board of Education members and to provide for conduct of run-off elections.

31.

Said electoral changes were effected for the purpose of complying with the one-man, one-vote decisions of the United States Supreme Court; to conform Board of Education eligibility with City Commission eligibility; to follow the State of Georgia in requiring a majority vote for election to public office; and in order to assure

a measure of governmental experience in membership through staggered terms of members of the City boards.

32.

The aforesaid changes did not have as their purpose the denial or abridgement of the right to vote on account of race, color or otherwise.

33.

The aforesaid changes did not, and will not, have the effect of denying or abridging the right to vote on account of race, color or otherwise.

34.

In addition to the foregoing, after November 1, 1964 some sixty (60) annexations to the City of Rome were effected either by local state law or local ordinance. Said annexations took place in the course of, and in consequence of, the normal growth and expansion of the City of Rome.

35.

Said annexations did not have as their purpose the denial or abridgement of the right to vote on account of race, color or otherwise.

36.

Said annexations did not, and will not, have the effect of denying or abridging the right to vote on account of race, color or otherwise.



37.

The electoral changes and annexations did not cause, and will not lead to, a retrogression of racial minorities with respect to their effective exercise of the electoral franchise.

38.

On June 15, 1974, plaintiff City of Rome, by its chief legal officer and pursuant to Section 5, submitted to the Attorney General application for the approval of a 1973 annexation to the City of Rome of that area known as "the Old Airport Community", such area being an unincorporated portion of Floyd County, Georgia, which portion was completely surrounded by the City of Rome.

39.

By letters dated July 24, 1974, the Assistant Attorney General requested certain additional information with respect to the submission by Plaintiff City of Rome on June 15, 1974.

40.

On February 7, 1975, Plaintiff City of Rome, by its chief legal officer and pursuant to Section 5, provided additional information requested by the Assistant Attorney General on July 24, 1974, and supplemented said requested information on June 2, 1975.

41.

On February 10, 1975, Plaintiff City of Rome, by its chief legal officer and pursuant to Section 5, submitted to the Attorney General

application for the approval of annexations consisting of fifty-nine (59) areas, including certain industrial areas.

42.

The Attorney General interposed no objection to Georgia Laws 1966, pp. 2379-82, amending the Charter of the City of Rome to provide for the reduction in the number of wards from nine (9) to three (3).

43.

By letter dated August 1, 1975, the Assistant Attorney General interposed an objection, pursuant to Section 5, to the annexations submitted by Plaintiff City of Rome, June 15, 1974 and February 10, 1975.

44.

On August 21, 1975, Plaintiff City of Rome by its chief legal officer and pursuant to Section 5, submitted to the Attorney General application with respect to certain electoral changes made since the effective date of Voting Rights Act and sought reconsideration of the Attorney General's objection to earlier submissions.

45.

By letter dated October 20, 1975, the Assistant Attorney General interposed an objection, pursuant to Section 5, to the electoral changes submitted by Plaintiff City of Rome on August 21, 1975.



46.

By letter dated October 20, 1975, referred to above, the Attorney General withdrew his objection to forty-seven (47) of the sixty (60) annexations submitted by Plaintiff City of Rome on June 15, 1974 and February 10, 1975.

47.

On May 24, 1976, Plaintiff City of Rome, by its chief legal officer, sought reconsideration of the Attorney General's objection to thirteen (13) of the annexations submitted on June 15, 1974 and February 10, 1975 and to the electoral changes submitted on August 21, 1975.

48.

By letter dated August 12, 1976, the Assistant Attorney General withdrew his objection to the thirteen (13) annexations as they relate to the Rome Board of Education elections, but refused to withdraw the objection of the Attorney General to those thirteen (13) annexations as they relate to the Rome City Commission elections and also refused to withdraw the objection of the Attorney General to the electoral changes submitted on August 21, 1975.

49.

As a result of the aforesaid interpositions of objections by the Attorney General to the annexations and electoral changes submitted by Plaintiff City of Rome, the regularly scheduled elections for members of the Rome City Commission and the Rome Board of Education, as required by the laws of the State of Georgia, Georgia Laws 1918, pages 813-885, as amended,

(Charter of the City of Rome, Georgia, Sections 4, 5, 144 and 145), have not been conducted.

50.

Representatives of the United States Department of Justice have indicated to the chief legal officer of Plaintiff City of Rome that any attempt to conduct such regularly scheduled elections would be enjoined by the United States Department of Justice because of the aforesaid interpositions of objections by Defendants.

51.

As a result of the aforesaid interpositions of objections by Defendants, the democratic electoral process within the City of Rome, Georgia has been clouded, impaired and halted, and all citizens of said city have been denied their right to associate and participate in the election of their public officials.

COUNT 1

THE CITY OF ROME, GEORGIA IS NOT A POLITICAL SUBDIVISION SUBJECT TO THE VOTING RIGHTS ACT

52.

Plaintiffs hereby incorporate the allegations of paragraphs 1 through 12 of this First Amended Complaint into, and make said allegations by reference a part of, this Count I.

53.

Plaintiff City of Rome is not a "political subdivision" within the meaning of the Voting Rights Act.



54.

Plaintiff City of Rome was and is not required to make submissions as required of political subdivisions by Section 5.

WHEREFORE, Plaintiffs pray that, pursuant to the provisions of 28 U.S.C. Section 2884, 42 U.S.C. Section 1973b(a) and 42 U.S.C. Section 1973c, a District Court of three judges be convened, and that said Court declare (a) that the City of Rome, Georgia, is not covered by, and subject to, the Voting Rights Act, and is not required to seek preclearance under Section 5 thereof; and (b) that Plaintiff City of Rome may enforce its electoral changes and annexations.

COUNT II

PLAINTIFF CITY OF ROME, IF IT WAS SUBJECT TO THE VOTING RIGHTS ACT, HAS NOT USED DURING THE SEVENTEEN YEARS PRECEDING THE FILING OF THIS ACTION ANY TEST OR DEVICE FOR THE PURPOSE OR WITH THE EFFECT OF DENYING OR ABRIDGING THE RIGHT TO VOTE ON ACCOUNT OF RACE OR COLOR, OR OTHERWISE, AND THE CITY IS NO LONGER SUBJECT TO THE VOTING RIGHTS ACT.

55.

Plaintiffs hereby incorporate the allegations of paragraphs 1 through 12 of this First Amended Complaint into, and make said allegations by reference a part of, this Count II.

56.

If it is determined that Plaintiff City of Rome was a political subdivision subject to the Voting Right Act as of the time of its passage, then because of the facts hereinbefore set out in paragraph 11 hereof, Plaintiff City of Rome should be entitled to "bail out" of said coverage in accordance with the provisions of Section 4 of said Act, 42 U.S.C. 1973b.

WHEREFORE, Plaintiffs pray, that, pursuant to the provisions of 28 U.S.C Section 2884, 42 U.S.C. Section 1937b(a) and 42 U.S.C. Section 1973c, a District Court of three judges be convened, and that, if said Court should determine and declare that the City of Rome, Georgia is covered by the Voting Rights Act, it further determine and declare (a) that no test or device as defined in 42 U.S.C. 1973b has been used in the City of Rome during the seventeen years preceding the filing of this action for the purpose or with the effect of denying or abriding the right to vote on account of race or color or otherwise, and that the City of Rome is no longer subject to the Voting Rights Act; and (b) that Plaintiff City of Rome may enforce its electoral changes and annexations.

## COUNT III

## PLAINTIFF CITY OF ROME MAY ENFORCE ITS ELECTORAL CHANGES AND ANNEXATIONS BECAUSE (A) THE MAJORITY VOTE REQUIREMENT HAS ALREADY BEEN PRECLEARED AND (B) THE ATTORNEY GENERAL



## FAILED TO OBJECT THERETO WITHIN SIXTY (60) DAYS IN ACCORDANCE WITH SECTION 5.

57.

Plaintiffs hereby incorporate the allegations of paragraphs 1 through 48 of this First Amended Complaint into, and make said allegations by reference a part of, this Count III.

58.

Because of the facts set out in paragraphs 13 through 17 hereof, Georgia Laws 1966, pp. 2375-8, (the majority vote requirement), has already been precleared by the Attorney General and requires no further action by Plaintiff City of Rome.

59.

The Attorney General is required by Section 5 to interpose his objections to any submission by a state or political subdivision within sixty (60) days after such submission.

60.

The Attorney General failed to respond to the submission by Plaintiff City of Rome on June 15, 1974, as supplemented by the information supplied by Plaintiff City of Rome on February 7, 1975, as hereinafter more fully appears.

61.

In a letter received by the Attorney General on May 24, 1976, Plaintiff City of Rome

requested reconsideration of the electoral changes submitted on August 21, 1975.

62.

The Attorney General failed to respond to such request for reconsideration until August 12, 1976 and thus failed to respond within the time required by Section 5.

WHEREFORE, Plaintiffs pray that, pursuant to the provisions of 28 U.S.C. Section 2884, 42 U.S.C. Section 1937b(a) and 42 U.S.C Section 1973c, a District Court of three judges be convened, and that, if said Court should determine and declare that the City of Rome, Georgia, is covered by the Voting Rights Act, it further determine (a) that Georgia Laws 1966, pp. 2375-8 the majority vote requirement, has already been precleared by the Attorney General and (b) that the Attorney General has not interposed an objection within sixty (60) days after the submission referred to in the Complaint, and (c) that Plaintiff City of Rome may enforce its electoral changes and annexations.

## COUNT IV

## SECTION 5 IS UNCONSTITUTIONAL

63.

Plaintiffs hereby incorporate the allegations of paragraphs 1 through 62 of this First Amended Complaint into, and make said allegations by reference a part of, this Count IV.



64.

Plaintiffs show that Section 5 is null and void in that the requirements thereof violate Article 4, Section 4 of the United States Constitution, guaranteeing a Republican Form of Government.

65.

Plaintiffs show that Section 5 is null and void in that the requirements thereof violate the Fifth Amendment to the United States Constitution, guaranteeing due process of law.

66.

Plaintiffs show that Section 5 is null and void in that the effect thereof violates the First and Ninth Amendments to the United States Constitution, guaranteeing the right of all citizens to participate in the political process of the municipality in which they reside.

67.

Plaintiffs show that Section 5 is null and void in that the requirements thereof violate the Tenth Amendment to the United States Constitution reserving the integral and traditional function of enacting laws and conducting local elections to the City of Rome, as a political unit of the State of Georgia.

68.

Plaintiffs show that Section 5 is null and void in that the requirements thereof violate the Fifteenth Amendment to the United States Constitution which require not only a showing of

disproportionate racially discriminatory effect but also a showing of racially discriminatory purpose as a sine qua non of a constitutional violation.

WHEREFORE, Plaintiffs pray that, pursuant to the provisions of 28 U.S.C. Section 2884, 42 U.S.C. Section 1937b(a) and 42 U.S.C. Section 1973c, a District Court of three judges be convened, and that said Court determine and declare:

(a) That Section 5 is null and void as contrary to the Constitution of the United States, either as a violation of:

(1) Article 4, Section 4, or
(2) The Fifth Amendment, or
(3) The First and Ninth Amendments, or
(4) The Tenth Amendment, or
(5) The Fifteenth Amendment, or
(6) All of said Provisions hereinbefore set out, or any combination thereof

and

(b) That Plaintiff City of Rome may enforce its electoral changes and annexations.

## COUNT V

## SECTION 5 HAS BEEN, AND IS BEING UNCONSTITUTIONALLY APPLIED TO PLAINTIFF CITY OF ROME.



69.

Plaintiffs hereby incorporate the allegations of paragraphs 1 through 68 of this First Amended Complaint into, and make said allegations by reference a part of, this Count V.

70.

The "Procedures for the Administration of Section 5 of the Voting Rights Act of 1965," promulgated by the United States Attorney General pursuant to 5 U.S.C. 301, 28 U.S.C. 509 and 42 U.S.C. 1973c, governing the administration of Section 5, are null and void in that:

A. They violate Article 4, Section 4 of the United States Constitution, guaranteeing a Republican Form of Government;

B. They violate the Fifth Amendment of the United States Constitution, guaranteeing due process of law;

C. The effect thereof violates the First and Ninth Amendments to the United States Constitution, guaranteeing the right of all citizens to participate in the political process of the municipality in which they reside.

D. The requirements thereof violate the Tenth Amendment of the United States Constitution, reserving the integral and traditional function of enacting laws and conducting local elections to the City of Rome as a political unit of the State of Georgia.

E. The requirements thereof violate the Fifteenth Amendment of the United States Constitution, which require not only a showing of disproportionate racially discriminatory impact but also a showing of racially discriminatory purpose as a sine qua non of a constitutional violation.

71.

Defendants, in promulgating and following said regulations, and in their other actions with respect to Plaintiffs, have applied the provisions of Section 5 unconstitutionally.

72.

Section 5 requires that the interposition of objections by the Attorney General to any submission by a state or political subdivision thereof must be based upon a finding that the qualification, prerequisite, standard, practice or procedure has the purpose and will have the effect of denying or abridging the right to vote on account of race or color.

73.

Defendants have failed to conduct any hearing with respect to the purpose or the effect of the electoral changes and annexations submitted by Plaintiff City of Rome, and thereby denied to Plaintiffs due process of law.

74.

Defendants have failed to make any finding whatsoever with respect to any alleged present existence or history of bloc voting by race within the City of Rome, Georgia, a finding necessary to the objections interposed.



75.

Defendants have failed to make any finding whatsoever with respect to the purpose of the electoral changes and annexations submitted by Plaintiff City of Rome, a finding necessary to the objections interposed.

76.

By interposing objections to the electoral changes and annexations submitted by Plaintiff City of Rome, Defendants have acted beyond the scope of their authority as Attorney General and Assistant Attorney General

77.

The interpositions of objections by Defendants have denied to Plaintiff City of Rome and Plaintiff Hamler and Plaintiff Hunter the right to a Republican Form of Government as guaranteed by Article 4, Section 4 of the United States Constitution.

78.

The interpositions of objections by Defendants have denied Plaintiff City of Rome and Plaintiff Hamler and Plaintiff Hunter due process of law as guaranteed by the Fifth Amendment to the United States Constitution.

79.

The interpositions of objections by Defendants have denied and disparaged the rights of Plaintiff Hamler and Plaintiff Hunter as well as the other citizens of Rome, Georgia, to participate in the political process of the municipality

in which they reside as guaranteed by the First and Ninth Amendments to the United States Constitution.

80.

The interpositions of objections by Defendants have denied to Plaintiff City of Rome the right to enact laws and conduct elections as guaranteed by the Tenth Amendment to the United States Constitution.

81.

The interpositions of objections by Defendants have violated the Fifteenth Amendment to the United States Constitution, because Defendants have not found in the actions of Plaintiff City of Rome any racially discriminatory purpose, which is a sine qua non of grounds for said objections.

WHEREFORE, Plaintiffs pray that, pursuant to the provisions of 28 U.S.C. Section 2884, 42 U.S.C. Section 1937b(a) and 42 U.S.C. Section 1973c, a District Court of three judges be convened, and that said Court determine and declare (a) that Section 5 has been unconstitutionally applied to Plaintiff City of Rome by the Attorney General and that his objections are invalid as a result of such unconstitutional application, and (b) that Plaintiff City of Rome may enforce its electoral changes and annexations.

## COUNT VI

## IF PLAINTIFF CITY OF ROME IS SUBJECT TO THE VOTING RIGHTS ACT, THE



## ELECTORAL CHANGES AND ANNEXATIONS REFERRED TO HEREIN DID NOT HAVE THE PURPOSE AND WILL NOT HAVE THE EFFECT OF DENYING OR ABRIDGING THE RIGHT TO VOTE ON ACCOUNT OF RACE OR COLOR, OR OTHERWISE.

82.

Plaintiffs hereby incorporate the allegations of paragraphs 1 through 37 of this First Amended Complaint into and make said allegations by reference a part of, this Count VI.

83.

The electoral changes and annexations did not have as their purpose causing or leading to a retrogression of racial minorities with respect to their effective exercise of the electoral franchise.

84.

The electoral changes and annexations do not cause, and will not lead to, a retrogression of racial minorities with respect to their effective exercise of the electoral franchise.

WHEREFORE, Plaintiffs pray that, pursuant to the provisions of 28 U.S.C. Section 2884, 42 U.S.C. Section 1937b(a) and 42 U.S.C Section 1973c, a District Court of three judges be convened, and that, if said Court should determine and declare that the City of Rome, Georgia, is covered by the Voting Rights Act of 1965, it further determine and declare (a) that the electoral changes and annexations, referred to in the Complaint, did not have the purpose and will not have the effect of denying

or abridging the right to vote on account of race or color, or otherwise, and (b) that Plaintiff City of Rome may enforce its electoral changes and annexations.

COUNT VII

ATTORNEYS FEES

85.

Plaintiffs hereby incorporate the allegations of paragraphs 1 through 84 of this First Amended Complaint into, and make said allegations by reference a part of, this Count VII.

86.

If Plaintiffs prevail on the Counts hereinbefore set out, or any of them, they are entitled to reasonable attorneys fees for the prosecution of this action.

WHEREFORE, Plaintiffs pray that, pursuant to the provisions of 28 U.S.C. Section 2884, 42 U.S.C. Section 1937b(a) and 42 U.S.C. Section 1973c, a District Court of three judges be convened, and that if Plaintiffs prevail in this action, they be awarded attorneys fees in a reasonable sum.

(Signatures and Certificate of Service Omitted in Printing)

* * * * * * * * * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
(Title Omitted in Printing)



ANSWER

FILED NOVEMBER 21, 1977

For their answer to the amended complaint filed herein, defendants state:

1. Defendants admit the allegation contained in paragraph 1 of the complaint. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation contained in the second sentence of paragraph 1. In response to the third sentence of paragraph 1, defendants admit that the City of Rome brings this action as a political subdivision of the State of Georgia.

2. Defendants admit the allegations contained in paragraphs 2 and 3 of the complaint.

3. Defendants admit the allegations contained in paragraphs 4 and 5 of the complaint.

4. In answer to paragraph 6 of the complaint, defendants admit that to the extent that this action is authorized under 42 U.S.C. 1973c and 42 U.S.C. 1973L(b), a controversy exists between the City of Rome and the defendants.

5. Defendants admit that this court has jurisdiction under Section 5 and 14(b) of the Voting Rights Act, 42 U.S.C. 1973c, 1973L(b), to hear the plaintiffs' request for a declaratory judgment as to whether the voting changes at issue are subject to the preclearance requirement of Section 5 and whether those voting changes are nondiscriminatory in purpose and

effect. Defendants deny the remaining allegations contained in paragraph 7.

6. Defendants admit the allegations contained in paragraph 8.

7. Defendants admit the allegations contained in paragraph 9 of the complaint. By way of further answer, defendants aver that the City of Rome does not now conduct registration for voting in municipal elections. However, the City of Rome conducted registration for voting from 1964 until 1969, at which time Floyd County assumed the responsibility for registering voters. Defendants also aver that the transfer of registration responsibility from the City of Rome to Floyd County, Georgia in 1969 has not received preclearance under Section 5 of the Voting Rights Act.

8. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10 of the complaint.

9. Defendants deny the allegations contained in paragraph 11 of the complaint.

10. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12 of the complaint.

11. Defendants admit the allegation contained in the first sentence of paragraph 13. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation contained in the second sentence in paragraph 13 of the complaint.



12. Defendants admit the allegations contained in paragraphs 14, 15 and 16 of the complaint.

13. Defendants deny the allegations of paragraph 17. Defendants aver that at the time the Voting Rights Act became effective, the Rome Charter provided that candidates may be nominated or elected by a plurality of the votes. A 1966 amendment which attempted to impose a majority vote requirement is legally unenforceable since it has not satisfied the preclearance requirements of Section 5. (See complaint, paragraph 22). Thus as of the effective date of the 1968 Georgia Municipal Election Code the plurality win requirement, rather than majority vote, was the legally enforceable method of election in the City of Rome.

14. Defendants admit the allegations contained in paragraph 18 of the complaint. By way of further answer to paragraph 18, defendants aver that by operation of Georgia Laws, 1918, pp. 813-885, the city commissioners were elected concurrently by plurality and without numbered posts.

15. Defendants admit the allegations contained in paragraph 19. By way of further answer to paragraph 19, defendants aver that by operation of Georgia Laws 1918, pp. 813-885, the board of education members were elected concurrently and without numbered posts.

16. Defendants admit the allegations contained in paragraph 20. By way of further answer to the second sentence of paragraph 20, defendants aver that the two additional commissioners would thereafter also be subject to the

other electoral requirements that were then in existence in Rome namely, plurality-win elections at which the officials were elected on a concurrent basis and without numbered posts.

17. Defendants admit the allegations contained in paragraph 21 of the complaint.

18. Defendants admit the allegations contained in paragraph 22 of the complaint. By way of further answer to paragraph 22, defendants aver that in addition to a numbered post and majority-vote requirement, Georgia Laws 1966, pp. 2375-8 also established a time framework for run-off elections when the majority-vote feature had not been satisfied. Defendants also aver that Georgia Laws 1966, pp. 2375-8 imposed a staggered term provision for city commissioner elections.

19. Defendants admit the allegations contained in the first sentence of paragraph 23 of the complaint. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second sentence of paragraph 23 of the complaint.

20. Defendants admit the allegations contained in paragraph 24 of the complaint. By way of further answer to paragraph 24 of the complaint, defendants aver that in addition to a numbered post provision, Georgia Laws 1966, pp. 2382-2386 also contained a majority vote requirement.

21. Defendants admit the allegations contained in paragraph 25 of the complaint.

22. Defendants admit the allegations contained in paragraph 26 of the complaint. By



way of further answer to paragraph 26, defendants aver that in addition to increasing the size of the Board of Education to six members, and providing for a numbered post provision and majority vote requirement, Georgia Laws 1966, pp. 2815-2819 established a framework for run-off elections when the majority vote feature had not been satisfied, and imposed a staggered-term provision and a sub-district residency requirement for Board of Education elections.

23. Defendants admit the allegations contained in paragraphs 27, 28, 29 and 30 of the complaint.

24. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 31 and 32 of the complaint.

25. Defendants deny the allegation contained in paragraph 33 of the complaint. Defendants aver that the aforementioned legislation provided for the establishment of, and then the continuation of, majority vote, numbered posts, and staggered terms for commissioner and for board of education elections and the imposition of a residency requirement for board of education elections. Defendants aver that these requirements have the effect of denying or abridging the right to vote on account of race or color in the context of the at-large system in effect in the City of Rome.

26. In answer to the allegations of paragraph 34 of the complaint, defendants admit that since November 1, 1964, at least sixty annexations to the City of Rome have been made. Defendants lack knowledge or information

sufficient to form a belief as to whether additional annexations were also made during this time period. Defendants lack knowledge as to whether "the annexations took place in the course of, and in consequence of, the normal growth and expansion of the City of Rome."

27. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph 35 of the complaint.

28. Defendants deny the allegations contained in paragraph 36 of the complaint insofar as they pertain to those annexations which have previously been described by the City of Rome in the following fashion:

Saddle Mountain - Du Pre
Holmes Acres - East 11th Extension
Lyons Drive - West Rome - Ala. Road
Georgia & Old Salem Apartments
Battey Hospital
Maplewood Square
Garden Lakes Rollingwood Area
Berkshire Estates
W. A. Du Pre - Rockmart Road
Westminister Apts, Harry Butler
Castle Cove Subdivision Area
Saddle Mt. #4, Bill Du Pre
Old Airport Community

Defendants admit the allegations contained in paragraph 36 of the complaint insofar as they pertain to those annexations which have previously been described by the City of Rome in the following fashion:

G.E. Plant & Site
Brookwood Estate - Burnett Ferry Rd.



Maplewood - Jack Anderson
East 17th Street - Maurice Gann
Off Saddle Mountain - Jack Busbin
3 Lost Lenox Circle - Traylor
East 11th St. - Rogers & Culbreth
Briarcliff Road - Mt. View Annex
One lot
Catholic School & Home
One lot - Bob Cescutti
Commercial (Commercial Park)
Darlington Sch. Strip Land,
Furnance Rd.
Commercial - Keller Dye Co.
Waste Treatment Plant (City)
North Heights Elem. School (City)
Beakert Steel Co.
G. L. Sutton, Black's Bluff Road
1 Lot Atteiram Subdivision
Commercial - Coosa Baking Co.
Commercial - Intergrated Products
Commercial - Southern Wholesale
Westwood Sub. Clyde Chester
Fox. Mfg. Co. Commercial, Old
Lindale Rd.
Berry Schools Comm., John Maddox
Dr.
Hosp. Corp. of America, Redmond
Park Hospital
Fellowship Baptist Church
Road Strip (Burnett Ferry Road)
Strip Road Old Lindale Road
Ramada Inn - Chas. Williams & Smith
Williamsom Street -Chas. Williams
End East 11th St. -Billy Towers
Saddle Mt. #3, Howell & Covington
Oostandaula River Pumping Station
(City)
V. E. Anderson, Gateway
Waste Treatment Plant (City)
Turner Frozen Foods, Rockmart Road

Commercial Garden Lakes Inds. Blvd.
Red Diamond - Alabama Road
Commercial, East Gate, Dodd Blvd.
East Gate #2, Hwy. 411, Howell & Covington
Maplewood Park - Munchak
Hwy. 411 Woodfin Turner Property
Hidden Valley, Howell & Covington
Commercial Coca Cola Co. Barron Corp.
Commercial Pharr Yarns, Huffacre Road
National City Bank, Martha Berry Blvd.

Defendants aver that the forty-seven annexations mentioned immediately above have been precleared pursuant to Section 5 by the Attorney General.

By way of further answer, defendants aver that they lack knowledge of information sufficient to form a belief as to the truth of the allegations contained in paragraph 36 insofar as they pertain to any annexations other than those identified in this answer.

29. Defendants deny the allegations contained in paragraph 37 of the complaint insofar as they pertain to Georgia Laws 1966, pp. 2375-2378; Georgia Laws 1966, pp. 2379-2382; Georgia Laws 1966, pp. 2382-2386; Georgia Laws 1966, pp. 3069-3072; Georgia Laws 1966, pp. 2815-2819; Georgia Laws 1966, pp. 3083-3087; Georgia Laws 1967, pp. 3296-3298; Georgia Laws 1970, pp. 2563-2566; Georgia Laws 1971, pp. 3664-3666, which established in the context of an already existing at-large system, a majority vote, numbered post and staggered term provision in commissioner and board of education



elections and a sub-district residency requirement for board of education elections. Defendants also deny the allegations contained in paragraph 37 insofar as they pertain to the thirteen annexations described in the first sentence of defendants' answer to paragraph 36 of the complaint. Defendants admit the truth of the allegations contained in paragraph 37 of the complaint insofar as they pertain to the forty-seven annexations described in the second sentence of defendants' answer to paragraph 36 of the complaint.

30. Defendants admit the allegations contained in paragraphs 38 and 39 of the complaint.

31. In answer to the allegations of paragraph 40 of the complaint, defendants admit that on February 7, 1975, the City of Rome forwarded to the Attorney General some of the additional information which had previously been requested, which the Attorney General received on February 10, 1975. The city did not forward all of the information which had been requested and, by letter dated March 6, 1975, the office of the Attorney General requested that the missing information be submitted. The Attorney General received the remainder of the information on June 2, 1975.

32. Defendants admit the allegations contained in paragraph 41 of the complaint. By way of further answer, defendants aver that on March 6, 1975, certain additional information pertaining to this submission was requested and that this information was received by the Department on June 2, 1975.

33. Defendants admit the allegations contained in paragraph 42 of the complaint.

34. Defendants admit the allegations contained in paragraph 43 of the complaint. Defendants aver that the June 15, 1974 submission and the February 10, 1975 submission were not completed until June 2, 1975, and that the Section 5 objection of August 1, 1975 concerned all of the submitted annexations.

35. Defendants admit the allegations of paragraphs 44 and 45 of the complaint.

36. Defendants admit the allegations contained in paragraph 46 of the complaint. Defendants aver that the Attorney General withdrew the Section 5 objection to 47 of the 60 annexations which collectively had been submitted on June 15, 1974 and February 10, 1975, and which submissions were completed on June 2, 1975.

37. Defendants admit the allegations of paragraph 47 of the complaint. Defendants aver that one of the thirteen annexations referred to was first submitted on June 15, 1974, the remaining twelve in question were submitted on February 10, 1975 and that both submissions were completed on June 2, 1975. By way of further answer, defendants aver that on July 14, 1976, the City of Rome supplemented its request for reconsideration by providing the Attorney General with affidavits from two members of the black community in Rome.

38. Defendants admit the allegations contained in paragraph 48 of the complaint.



39. In answer to the allegations of paragraph 49, defendants admit that since the date that the abovementioned objections were interposed, the City of Rome has not conducted its regularly scheduled elections as set forth by its charter. Defendants deny the remaining allegations of paragraph 49.

40. Defendants deny the allegations contained in paragraph 50 of the complaint. By way of further answer, defendants aver that a representative of the Department of Justice informed the chief legal officer of the City that injunctive relief might be sought should the city seek to enforce those voting changes that had not met the preclearance requirements of Section 5.

41. Defendants deny the allegations contained in paragraph 51 of the complaint.

42. In answer to paragraph 52 of the complaint, defendants hereby incorporate the responses given in paragraphs 1-10 of this answer.

43. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 53 of the complaint.

44. Defendants deny the allegation of paragraph 54 of the complaint.

45. In answer to paragraph 55 of the complaint, defendants hereby incorporate the responses given in paragraphs 1-10 of this answer.

46. Defendants deny the allegations contained in paragraph 56 of the complaint, whcih allege that the City of Rome is entitled to "bailout" from coverage under the Act.

47. In answer to the allegations contained in paragraph 57 of the complaint, defendants hereby incorporate the responses given in paragraphs 1-38 of this answer.

48. Defendants deny the allegations contained in paragraph 59 of the complaint.

49. Defendants admit the allegations contained in paragraph 59 of the complaint. Defendants aver that the Attorney General is required to interpose an objection to any submission within 60 days after such submission is completed.

50. Defendants deny the allegations contained in paragraph 60 of the complaint. By way of further answer, defendants aver that the Attorney General responded to the June 15, 1974 submission on July 24, 1974, when he requested additional information regarding the submission. The Attorney General responded to the February 10, 1975 submission on March 6, 1975, when he requested additional information regarding the submission.

51. Defendants admit the allegations contained in paragraph 61 of the complaint. By way of further answer, defendants aver that on July 14, 1976, the City of Rome supplemented this request by providing the Attorney General with affidavits from two members of the black community in Rome.



52. Defendants deny the allegations contained in paragraph 62 of the complaint. By way of further answer, defendants aver that the Attorney General responded to the request for reconsideration within sixty days from the date that the City of Rome supplemented the request by providing affidavits on July 14, 1976. Defendants also aver that although the Attorney General attempts to respond to requests for reconsideration with sixty days (28 C.F.R. Section 51.21), each objection remains effective until withdrawn and is not automatically withdrawn at the conclusion of a sixty day period.

53. In answer to the allegations contained in paragraph 63 of the complaint, defendants hereby incorporate the responses given in paragraphs 1-52 of this answer.

53. In answer to the allegations contained in paragraph 63 of the complaint, defendants hereby incorporate the responses given in paragraphs 1-52 of this answer.

54. Defendants deny the allegations contained in paragraphs 64-68 of the complaint.

55. In answer to the allegations contained in paragraph 69 of the complaint (Count V), defendants hereby incorporate the responses given in paragraphs 1-54 of this answer.

56. Defendants deny the allegations contained in paragraph 70 of the complaint.

57. Defendants have moved to dismiss paragraphs 71-81 of the complaint and thus defendants are not answering the allegations contained in those portions of the complaint at this time.

58. In answer to paragraph 82 of the complaint, defendants hereby incorporate the responses given in paragraphs 1-29 of this answer.

59. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph 83 of the complaint.

60. Defendants deny the allegation contained in paragraph 84 of the complaint.

(Signatures and Certificate of Service omitted in printing)

* * * * * * * * * * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
(Title Omitted in Printing)

PLAINTIFF'S FIRST REQUEST FOR
ADMISSION OF FACTS AND
GENUINENESS OF DOCUMENTS

December 7, 1977

Exhibit "A"

DEPARTMENT OF JUSTICE
WASHINGTON

July 11, 1968



AIR MAIL
Honorable Arthur K. Bolton
Attorney General
State of Georgia
132 Judicial Building
Forty Capitol Square
Atlanta, Georgia 30334

Dear Mr. Attorney General:

This will reply to your letter of May 13, 1968, in which you submitted to the Attorney General, pursuant to Section 5 of the Voting Rights Act of 1965, the Georgia Municipal Election Code and Act No. 993, adopted by the Georgia General Assembly during the 1968 session. We have reviewed the submitted Code and Act and, on behalf of the Attorney General of the United States, make the following objections, pursuant to Section 5 of the Voting Rights Act of 1965.

1. Section 34A-1211 of the Georgia Municipal Election Code, provides for assistance to voters in a manner identical to that provided by Section 13 of Act No. 997 which you previously submitted to this Department. I sent you my response to this submission on June 19, 1968. The objection to the present submission of Section 34A-1211 is the same as I made in that letter. I indicated that the Court in Morris v. Fortson, 261 F. Supp. 538 (N.D. Ga. 1966), held that the new statute limiting to one the number of illiterate electors who could be assisted by another elector is unreasonable. The Court found the old statute which permitted an

elector to assist ten individual voters was reasonable. We see no valid basis for restricting the number below ten, particularly in light of the fact that one of the effects of the Voting Rights Act is to increase the number of illiterate voters in your state. We received today your letter of June 28, 1968 and will give it careful consideration.

2. The Attorney General must also object under Section 5 of the Voting Rights Act of 1965 to Section 34A-501(b), Section 34A-505, and Section 34A-512 of the Georgia Municipal Elections Code. This objection applies only to those municipalities which did not have in force or effect on November 1, 1964, standards, practices or procedures identical to those set out in the new Georgia Municipal Code.

   I would appreciate it if you would furnish me the names of the municipalities which did not have such standards, practices and procedures in effect on November 1, 1964.

   I should also advise you that these sections were suspended by Section 4 of the Voting Rights Act of 1965. I am aware that in your submission section 34A-512 has stamped in the margin a notation that it was suspended by that Act.

3. Section 34A-403 and Section 34A-503 of the Georgia Municipal Election Code require persons who hold the election



and registration offices enumerated be "judicious, intelligent and upright electors." These qualifications are vague and subjective, and are subject to the same kind of discriminatory application tnat formed the basis for invalidating tests and devices under the Voting Rights Act of 1965. Also, your submission does not include information as to whether these standards enumerated in the Code were the same as those in force or effect by the various municipalities in the state on November 1, 1964. In light of these two factors, we have an obligation to interpose an objection to these sections in those municipalities in which these standards were not in force or effect on November 1, 1964. However, we would be pleased to review this determination in the event we receive from you information relating to the standards in force in each municipality on November 1, 1964 and an analysis by race of the poll officers, registrar and deputy registrar, in each municipality since August 6, 1965.

With reference to those sections of the Georgia Municipal Election Code to which objections have not been interposed, I am sure that you are aware that my failure to object does not bar any subsequent action to enjoin the enforcement of any of these sections.

Please do not hesitate to contact my office if you have any questions in regard to the above matters. Should you wish to bring additional facts to the attention of the Attorney

General, he would be pleased to entertain them and reappraise his position.

Sincerely,

/S/

STEPHEN J. POLLAK
Assistant Attorney General
Civil Rights Division

* * * * * * * * * * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
(Title Omitted in Printing)

PARTIES' FIRST STIPULATION OF FACTS
Filed December 14, 1977

Come now Plaintiffs and Defendants in the above-captioned matter, and pursuant to the Order of this Honorable Court, file this their First Stipulation of Facts, agreeing that the following facts are true:

1.

The City of Rome is the larger of two incorporated cities in Floyd County, Georgia. According to the 1970 U.S. Census of Population, the population of Floyd County, Georgia is:

A. Total population: 73,742
   1. Total white population: 64,137 (87.0%)
   2. Total black population: 9,605 (13.0%)



B. Floyd County less the City of Rome total population: 42,983
   1. Total white population: 40,594 (94.4%)
   2. Total black population: 2,389 (5.6%)

2.

According to the 1970 U.S. Census of Population, the City of Rome, Georgia has:

A. Total population: 30,759
   1. Total white population: 23,543 (76.6%)
   2. Total black population: 7,216 (23.4%)

B. Total Population, by Wards:
   1. Ward 1 total population: 7,514
      a. Total white population: 5,359 (71.3%)
      b. Total black population: 2,155 (28.7%)
   2. Ward 2 total population: 11,523
      a. Total white population: 7,619 (66.2%)
      b. Total black population: 3,894 (33.8%)
   3. Ward 3 total population: 11,722
      a. Total white population: 10,555 (90.0%)
      b. Total black population: 1,167 (10.0%)

C. Total Voting Age Population: 20,974
   1. Total white voting age population: 16,639 (79.4%)
   2. Total black voting age population: 4,335 (20.6%)

3.

According to the Voter Registrar of Floyd County, as of 1975, there were within the corporate limits of the City of Rome:

A. Total registered voters: 13,097
   1. Total white registered voters: 10,982 (83.9%)
   2. Total black registered voters: 2,026 (15.5%)

4.

The City of Rome is governed by a council-manager form of government. The city council (known as the Rome City Commission) has, for at least 59 years, been elected at large. The City Manager is a full-time employee, appointed by, and serving at the will of, the council.

5.

The City of Rome does not conduct registration for voting in elections for membership on the Rome City Commission or on the Rome Board of Education or registration for voting in any other primary or election, municipal or otherwise. However, the City of Rome conducted registration for voting from 1964 until 1969, at which time Floyd County assumed the responsibility for registering voters. (See Paragraphs 43 and 44 herein). The transfer of registration responsibility from the City of Rome to Floyd County, Georgia in 1969 has not received preclearance under Section 5 of the Voting Rights Act; however, in Plaintiffs' "Supplement to their First Amended Complaint", Plaintiffs seek preclearance thereof in this lawsuit.



6.

In 1968, the General Assembly of the State of Georgia passed an act known as the Georgia Municipal Election Code (Title 34A of the Code of Georgia of 1933).

7.

The Georgia Municipal Election Code was submitted to the United States Attorney General on May 13, 1968, and no objection thereto was interposed by him to Sections 34A-102 or 34A-1407(a) thereof.

8.

The said Election Code provides in Section 34A-102 thereof:

> "This Code shall apply to any general or special election in every municipal corporation of this State to fill any municipal office, and to any general or special municipal primary, if any, to nominate candidates for any such office, to any election to submit a question to the people, and to any other municipal election or primary for any other purpose whatsoever. Except as specifically provided in this Code, its provision shall take precedence over municipal charter provisions which are in conflict herewith."

9.

The said Election Code also provides, in Section 34A-1407(a) thereof:

"If the municipal charter or ordinance, as now existing or as amended subsequent to the effective date of this Subsection, provides that a candidate may be nominated or elected by a plurality of the votes cast to fill such nomination or public office, such provision shall prevail. Otherwise, no candidate shall be nominated for public office in any primary or elected to public office in any election unless such candidate shall have received a majority of the votes cast to fill such nomination or public office."

10.

In 1918, the General Assembly of the State of Georgia passed an act creating a new charter and municipal government for the City of Rome. (Georgia Laws 1918, pp. 813-885). Exhibit 1. The Act established as the governing and legislative body a commission of seven members, one from each ward of the City and elected by the consolidated vote of the entire city. By operation of said laws, the city commissioners were elected concurrently by plurality and without numbered posts.

11.

By the same Act (Georgia Laws 1918, pp. 813-885), there was established a board of education, consisting of five (5) members from the City and elected at large. By operation of said laws, the board of education members were elected concurrently and without numbered posts.



12.

In 1929, two additional wards (the eighth and the ninth) were annexed into the City, and an election for an additional commissioner to represent each of said wards was provided for. In the intial election, each such commissioner was to be elected only by residents of each such ward respectively, and thereafter in the manner provided for existing commissioners, to-wit, at large. The two additional commissioners would thereafter also be subject to the other electoral requirements that were then in existence in Rome namely, plurality-win elections at which the officials were elected on a concurrent basis and without numbered posts. Exhibit 2.

13.

The General Assembly passed certain Acts in 1966, 1967, 1970 and 1971 which were concerned with the composition of the government of the City of Rome, with the Board of Education of said City and with certain local election procedures. All the acts were enacted at a time when the provisions of Section 5 were in effect.

14.

Georgia Laws 1966, pp. 2375-8 amended the Charter of the City of Rome (Ga. Laws 1918, p. 813) to provide for the offices of city commissioners as follows: One Commissioner from one of three posts in each of three wards, to be elected by a majority vote. Said laws also established a time framework for run-off elections when the majority-vote feature had not

been satisfied. Said laws also imposed a staggered term provision for city commissioner elections. Exhibit 3.

15.

Georgia Laws 1966, pp. 2379-82 amended the Charter of the City of Rome (Ga. Laws 1918, pp. 813-885, as amended by Ga. Laws 1929, pp. 1254-1276) to provide for the reduction in the number of wards from Nine (9) to three (3). Exhibit 4.

16.

Georgia Laws 1966, pp. 2382-2386 amended the Charter of the City of Rome, (Ga. Laws 1918, pp. 813-885) to provide for the qualifications and salary of commissioners, for organization of the commission and for election by posts in each of the wards. Said laws also contained a majority vote requirement. Exhibit 5.

17.

Georgia Laws 1966, pp. 3069-3072 amended the Charter of the City of Rome (Ga. Laws 1918, pp. 813-885) to remove certain restrictions from voter qualifications. Exhibit 6.

18.

Georgia Laws 1966, pp. 2815-2819 amended the charter of the City of Rome (Ga. Laws 1918, pp. 813-885) to provide for a six-member city board of education and for the election of members to said board by posts with two posts for each of three wards, to be elected by a majority vote. Said laws also established a



framework for run-off elections when the majority vote feature had not been satisfied, and imposed a staggered-term provision and a sub-district residency requirement for Board of Education elections. Exhibit 7.

19.

Georgia Laws 1966, pp. 3083-3087 amended the Charter of the City of Rome (Ga. Laws 1818, pp. 813-885) to make provisions for the nomination fo candidates in city elections and for the conduct of primaries and elections. Exhibit 8.

20.

Georgia Laws 1967, pp. 3296-3298, corrected a typographical error in Georgia Laws 1966, pp. 2375-2378. Exhibit 9.

21.

Georgia Laws 1970, pp. 2563-2566 amended the Charter of the City of Rome (Ga. Laws 1918, pp. 813-885, as amended by Ga. Laws 1966, p. 2375) to change the election date of city commissioner elections and to provide for conduct of run-off elections. Exhibit 10.

22.

Georgia Laws 1971, pp. 3664-3666 amended the Charter of the City of Rome (Ga. Laws 1966, p. 2815) to change the election date of City Board of Education members and to provide for conduct of run-off elections. Exhibit 11.

23.

In addition to the foregoing, after November 1, 1964 some sixty (60) annexations to the City of Rome were effected either by local state law or local ordinance.

24.

The following annexations did not, and will not, have the effect of denying or abridging the right to vote on account of race, color or otherwise, and did not cause, and will not lead to, a retrogression of racial minorities with respect to their effective exercise of the electoral franchise in the City of Rome, Georgia:

Those annexations which have previously been described by the City of Rome (see Exhibit 12) in the following fashion:

G.E. Plant & Site
Brookwood Estate - Burnett Ferry Rd.
Maplewood - Jack Anderson
East 17th Street - Maurice Gann
Off Saddle Mountain - Jack Busbin
3 Lost Lenor Circle - Traylor
East 11th St. - Rogers & Culbreth
Briarcliff Road - Mt. View Annex
One lot
Catholic School & Home
One lot - Bob Cescutti
Commercial (Commercial Park)
Darlington Sch. Strip Land, Furnace Rd.
Commercial - Kellery Dye Co.
Waste Treatment Plant (City)
North Heights Elem. School (City)
Beakert Steel Co.
G. L. Sutton, Black's Bluff Road
1 Lot Atteiram Subdivision



Commercial - Coosa Baking Co.
Commercial - Integrated Products
Hidden Valley, Howell & Covington
Commercial Coca Cola Co. Barron Corp.
Commercial-Southern Wholesale
Westwood Sub. Clyde Chester
Fox Mfg. Co. Commercial, Old Lindale Rd.
Commercial Pharr Yarns, Huffacre Road
National City Bank, Martha Berry Blvd.
Berry Schools Comm., John Maddox Dr.
Hosp. Corp. of America, Redmond Park Hospital
Fellowship Baptist Church
Road Strip (Burnett Ferry Road)
Strip Road Old Lindale Road
Ramada Inn - Chas. Williams & Smith
Williamsom Street - Chas. Williams
End East 11th St. - Billy Towers
Saddle Mt. #3, Howell & Covington
Oostanaula River Pumping Station (City)
V. E. Anderson, Gateway
Waste Treatment Plant (City)
Turner Frozen Foods, Rockmart Road
Commercial Garden Lakes Inds. Blvd.
Red Diamond - Alabama Road
Commercial, East Gate, Dodd Blvd.
East Gate #2, Hwy. 411, Howell & Covington
Maplewood Park - Munchak
Hwy. 411 Woodfin Turner Property

The forty-seven annexations mentioned immediately above have been precleared pursuant to Section 5 by the Attorney General.

25.

The following thirteen annexations have not been precleared by the United States Attorney General:

Those annexations which have previously been described by the City of Rome (see Exhibit 12) in the following fashion:

(1) Saddle Mountain - Du Pre 4/8/65 (Exhibit 13)
(2) Holmes Acres - East 11th Extension 4/8/65 (Exhibit 13)
(3) Lyons Drive - West Rome - Ala. Road 4/8/65 (Exhibit 13)
(9) Georgian & Old Salem Apartments 4/18/66 (Exhibit 14)
(13) Battey Hospital 2/20/67 (Exhibit 15)
(16) Maplewood Square 5/1/67 (Exhibit 16)
(18) Garden Lakes Rollingwood Area 9/5/67 (Exhibit 17)
(20) Berkshire Estates 2/19/68 (Exhibit 18)
(39) W.A. Du Pre - Rockmart Road 2/16/70 (Exhibit 19)
(40) Westminister Apts., Harry Butler 5/4/70 (Exhibit 20)
(43) Castle Cove Subdivision Area 2/15/71 (Exhibit 21)
(52) Saddle Mt. #4, Bill Du Pre (Exhibit 22)
(53) Old Airport Community (Exhibit 23)

26.

On June 15, 1974, plaintiff City of Rome, by its chief legal officer and pursuant to Section 5, submitted to the Attorney General application for the approval of a 1973 annexation to the City of Rome of that area known as "the Old Airport Community", such area being an unincorporated portion of Floyd County, Georgia, which portion was completely surrounded by the City of Rome. Exhibit 23.



27.

By letters dated July 24, 1974, the Assistant Attorney General requested certain additional information with respect to the submission by Plaintiff City of Rome on June 15, 1974.

28.

On February 7, 1975, Plaintiff City of Rome, by its chief legal officer and pursuant to Section 5, provided additional information requested by the Assistant Attorney General on July 24, 1974, which letter was received on February 10, 1975. By letter dated March 6, 1975, the office of the Attorney General contended that the City did not forward all the information he had requested and requested that the missing information be submitted. The Attorney General received the remainder of the information on June 2, 1975.

29.

On February 10, 1975, Plaintiff City of Rome, by its chief legal officer and pursuant to Section 5, submitted to the Attorney General application for the approval of annexations consisting of fifty-nine (59) areas, including certain industrial areas. On March 6, 1975, certain additional information pertaining to this submission was requested and this information was received by the Department on June 2, 1975.

30.

The Attorney General interposed no objection to Georgia Laws 1966, pp. 2379-82, amending the Charter of the City of Rome to provide

for the reduction in the number of wards from nine (9) to three (3).

31.

By letter dated August 1, 1975, the Assistant Attorney General interposed an objection, pursuant to Section 5, to the annexations submitted by Plaintiff City of Rome on June 15, 1974 and February 10, 1975. On March 6, 1975, certain additional information pertaining to this submission was requested and this information was received by the Department on June 2, 1975.

32.

On August 21, 1975, Plaintiff City of Rome, by its chief legal officer and pursuant to Section 5, submitted to the Attorney General application with respect to certain electoral changes made since the effective date of the Voting Rights Act and sought reconsideration of the Attorney General's objection to earlier submissions.

33.

By letter dated October 20, 1975, the Assistant Attorney General interposed an objection, pursuant to Section 5, to the electoral changes submitted by Plaintiff City of Rome on August 21, 1975.

34.

By letter dated October 20, 1975, referred to above, the Attorney General withdrew his objection to forty-seven (47) of the sixty (60) annexations which collectively had been sub-



mitted by Plaintiff City of Rome on June 15, 1974 and February 10, 1975, which submission the Attorney General contends were completed on June 2, 1975.

35.

On May 24, 1976, Plaintiff City of Rome, by its chief legal officer, sought reconsideration of the Attorney General's objection to thirteen (13) of the annexations submitted on June 15, 1974 and February 10, 1975 and to the electoral changes submitted on August 21, 1975. One of the thirteen (13) annexations referred to was first submitted on June 15, 1974, the remaining twelve in question were submitted on February 10, 1975, and the Attorney General contends that both submissions were completed on June 2, 1975. In connection with its request for reconsideration, on July 14, 1976, the City of Rome provided the Attorney General with affidavits from two members of the black community in Rome.

36.

By letter dated August 12, 1976, the Assistant Attorney General withdrew his objection to the thirteen (13) annexations as they relate to the Rome Board of Education elections, but refused to withdraw the objection of the Attorney General to those thirteen (13) annexations as they relate to the Rome City Commission elections and also refused to withdraw the objection of the Attorney General to the electoral changes submitted on August 21, 1975.

37.

Since 1970, one black candidate (Rev. Clyde Hill) has run for the Rome Board of Education. (See Exhibits 28 and 29).

38.

Since 1970, one black candidate (Samuel Stubbs) has run in a primary for the Rome City Commission. (See Exhibit 32).

39.

No black person has ever been elected to the Rome City Commission.

40.

No black person has ever been elected to the Rome Board of Education.

41.

One black (Elgin Carmichael) was appointed to the Rome Board of Education in April, 1975.

42.

No elections for either the City Commission or the board of education have been held in Rome, Georgia since November 5, 1974.

43.

Section 34A-501(b) of The Code of Georgia of 1933 is shown in Exhibit 24.



44.

A City of Rome ordinance enacted pursuant to Georgia Code Section 34A-501(b) is shown in Exhibit 25.

45.

Returns for Board of Education elections in 1967 are shown in Exhibit 26.

46.

Returns for City Commission elections in November, 1970, are shown in Exhibit 27.

47.

Returns for Board of Education elections in December, 1970, are shown in Exhibit 28.

48.

Returns for Board of Education run-off elections in December, 1970, are shown in Exhibit 29.

49.

Returns for City Commission and Board of Education elections in November, 1972, are shown in Exhibit 30.

50.

Returns for City Commission and Board of Education elections in November, 1974, (Rome's last election) are shown in Exhibit 31.

51.

Returns for the Rome City Commission Republican Primary in 1972 are shown in Exhibit 32.

52.

The approximate breakdown of black registered voters in the City of Rome as of November 23, 1977, is shown in Exhibit 33.

(Signatures and Certificate of Service Omitted in Printing)

Exhibit "1"

PART III.-TITLE I.-Municipal Corporations.

ROME, CITY OF; NEW CHARTER
No. 522.

An Act to create a new charter and municipal government for the city of Rome; to define the rights and powers of the municipality; to define the corporate limits thereof and to repeal all former charters and all laws in conflict therewith.

* * * * * * * * * * *

Sec. 3. Be it further enacted by the authority aforesaid, That the governing and legislative authority of said city shall be vested in a commission of seven members. The members of said commission shall have attained the age of twenty-one (21) years, and shall have been residents and citizens of said city for at least two years next preceding their election, and shall be qualified voters of the city of



Rome. Each member of said commission shall receive a salary of two hundred ($200.00) dollars per annum. At their first meeting, or so soon thereafter as possible, the members of said commission shall elect one of their number as chairman, who shall receive an additional salary of four hundred ($400.00) dollars per annum. The chairman, or in his absence, the chairman pro tem., shall preside over the deliberations of the commission and shall have the right to vote on all questions; he shall preserve order and decorum at all meetings of the commission and shall enforce the rules of that body, and shall have power to punish all persons for contempt of such rules, and shall perform all other duties incident to his office. Service of legal process directed to or against the city shall be served upon the chairman of the commission. One of said commissioners shall be elected from each ward of the city, but shall be elected by the consolidated vote of the entire city. Said commissioners shall be elected for a term of four years, except as hereinafter provided, and until their successors are elected and qualified, subject, however, to recall, as is hereinafter provided.

Sec. 4. Be it further enacted by the authority aforesaid, That an election shall be held in said city on the first Tuesday in March, 1919, to elect said commissioners, who shall hold office from the first Monday in April, 1919, to the first Monday in January, 1921. On the first Tuesday in December, 1920, and quadrennially thereafter, an election shall be held for the purpose of electing said commissioners for a term of four years, beginning on the first Monday in January thereafter. In all elections the candidate from each ward receiving the highest vote shall be declared elected. The

present city commissioners shall remain in office until the first Monday in April, 1919.

* * * * * * * * * * *

Sec. 84. Be it further enacted by the authority aforesaid, That a board of education, to consist of five (5) members, be and the same is hereby established. The members of said board at the time of and during their continuance in office shall be bona fide residents and citizens of said city of Rome. They shall be upright and intelligent citizens of said city and shall hold office for a term of four (4) years, and until their successors are elected and qualified. The present board of education of said city shall continue in office until the first Monday in April, 1919, or until their successors are elected and qualified. That on the first Tuesday in March, 1919, when the Rome city commission is elected, and quadrennially thereafter, there shall be elected by the qualified voters of said city in said general election, five (5) members of said board. Vacancy in said board of education caused by death, resignation, removal, disqualification or otherwise, shall be filled by the remaining members of said board.

Approved August 19, 1918.

Exhibit "28"

MINUTES CALLED MEETING
ROME CITY COMMISSION
DECEMBER 2, 1970

The meeting was called to order by Chairman, Ben Lucas who stated that the meeting was called for the purpose of receiving the



results of the General Election, held on December 1, 1970, for three members of the Rome School Board of Education.

The following Commissioners were present: Lucas, Oldham, Holcombe, Caldwell, Harvey, McEver, Hunter and Tolbert.

Mr. Marion Morris presented the consolidated returns of the Election as follows:

ELECTION RETURNS (1)

Upon motion of Commissioner Tolbert, second of Commissioner Hunter, the report of the Election Manager was approved.
Ayes: Oldham, Holcombe, Caldwell, Harvey, McEver, Hunter and Tolbert.
Noes: None.

A Resolution calling for a Run-Off election to fill post 2 Ward 2, to be held on Tuesday, December 15, 1970, as provided by the Charter of the City of Rome, was upon motion of Commissioner McEver, second of Commissioner Oldham, adopted as follows:

RESOLUTION (2)

Ayes: Oldham, Holcombe, Caldwell, Harvey, McEver, Hunter and Tolbert.
Noes: None.

There being no further business, upon motion of Commissioner Oldham, second of Commissioner McEver, the meeting adjourned.
Ayes: Oldham, Holcombe, Caldwell, Harvey, McEver, Hunter and Tolbert.
Noes: None.

/S/

Mrs. Ray Beard, Secretary
ROME CITY COMMISSION

WHEREAS, in the election to fill posts on the City of Rome Board of Education held December 1, 1970, no candidate for Post 2 of Ward 2 received a majority of the consolidated votes of the entire city; and

WHEREAS, in such cases, the Charter of the City of Rome and the Georgia Municipal Election Code provide for a run-off election.

NOW THEREFORE, be it resolved that there will be held on Tuesday, December 15, 1970, a run-off election between Dr. Sara L. Hoyt and the Reverend Clyde Hill, Sr. Said election will be conducted in the Lobby of the City Auditorium in Rome, Georgia in accordance with the applicable law, and the candidate receiving a majority of the votes in said run-off election shall fill Post 2 of Ward 2 on the said Board of Education.

MEMBERS BOARD OF EDUCATION
CONSOLIDATED CITY OF ROME RETURNS

We the undersigned Superintendant, Manager and Assistant Managers for the City Board of Education Election held on Tuesday the 1st day of December, 1970, in the City of Rome, Georgia, Election Districts of Floyd County, Georgia, do, jointly and severally, certify that we have met and consolidated the returns of the City of Rome, Georgia in the said General Election and it appears that: for the Office of Members Board of Education received the Total number of Votes as follows:



| NAME | TOTAL NUMBER OF VOTES |
|---|---|
| WARD 1 - POST 2 | |
| Jack H. Anderson | 1582 |
| Mrs. Arnell Stone | 417 |
| WARD 2 - POST 2 | |
| Jean V. Anderson | 407 |
| Rev. Clyde Hill, Sr. | 921 |
| Dr. Sara L. Hoyt | 909 |
| Rev. Warren L. Jones | 143 |
| WARD 3 - POST 2 | |
| Mrs. Dolph Kennedy | 1180 |
| Mrs. Suzanne W. Smith | 810 |
| | 2400 |

IN TESTIMONY WHEREOF, We, the Managers, Superintendent and Assistant Managers, have hereunto set our hands and seals this 1st, day of December, 1970 Signed in Triplicate.

/s/ _____ SUPERINTENDENT
/s/ _____ MANAGER
/s/ _____ MANAGER
/s/ _____ MANAGER

Exhibit "29"

MINUTES CALLED MEETING
ROME CITY COMMISSION
DECEMBER 16, 1970

The meeting was called to order by the Chairman Ben Lucas, who stated that the meeting was called for the purpose of receiving the returns of the Run-Off Election for members from Ward 2 Post 2, for the City Board of Education, held on December 15, 1970.

The following Commissioners were present: Lucas, Oldham, Caldwell, Harvey and Hunter.

Mr. Marion Morris, Manager of the above Run-Off Election, read the following statement of the consolidated returns of the Election.

(COPY OF REPORT)

Upon motion of Commissioner Oldham, second of Commissioner Caldwell, the Election Returns were approved.
Ayes: Lucas, Oldham, Caldwell, Harvey and Hunter.
Noes: None.

Commissioner Hunter made a motion, seconded by Commissioner Caldwell, that Mr. Morris, as well as the other managers and workers, be commended for the efficient manner in which the Election was conducted.
Ayes: Lucas, Oldham, Caldwell, Harvey and Hunter.
Noes: None.

There being no further business, upon motion of Commissioner Caldwell, second of Commissioner Hunter, the meeting adjourned.
Ayes: Lucas, Oldham, Caldwell, Harvey and Hunter.
Noes: None.

/S/

Mrs. Ray Beard, Secretary



MEMBERS BOARD OF EDUCATION
CONSOLIDATED CITY OF ROME RETURNS

We the undersigned Superintendent, Manager and Assistant Managers for the City Board of Education Election (Run-Off) held on Tuesday, the 15th day of December, 1970, in the City of Rome, Georgia, Election Districts of Floyd County, Georgia, do, jointly and severally, certify that we have met and consolidated the returns of the City of Rome, Georgia in the said General Election and it appears that: for the Office of Members Board of Education received the Total number of Votes as follows:

| NAME | TOTAL NUMBER OF VOTES |
|---|---|
| WARD 2 - POST 2 | |
| Rev. Clyde Hill, Sr. | 1142 |
| Dr. Sara L. Hoyt | 1409 |
| TOTAL VOTES CAST | 2551 |

IN TESTIMONY WHEREOF, We, the Managers, Superintendent and Assistant Managers, have hereunto set our hands and seals this 15th day of December, 1970. Signed in Triplicate.

/s/_____SUPERINTENDENT
/s/_____MANAGER
/s/_____MANAGER
/s/_____MANAGER

Exhibit "32"

CONSOLIDATED CITY OF ROME RETURNS
FOR
REPUBLICAN PARTY PRIMARY

We, the undersigned Superintendent and his Assistants for the City of Rome Primary held on Tuesday, the Eighth day of August, 1972, in City of Rome, Floyd County, Georgia, do jointly and severally certify that we have met and consolidated the returns of the Election Districts of this County in the said General Primary and that the following are the results:

FOR MEMBER OF ROME
CITY COMMISSION

WARD 2, POST 2

| | | |
|---|---|---|
| JAMES F. MILAM | Received 197 | votes |
| SAMUEL B. STUBBS | Received 79 | votes |

FOR MEMBER OF ROME
BOARD OF EDUCATION

WARD 1, POST 1

| | | |
|---|---|---|
| JOEL L. JONES | Received 209 | votes |

IN TESTIMONY WHEREOF, We, the Superintendent and his Assistants aforesaid, have hereunto set our hands and seals this 12th day of August, 1972.



SIGNED IN QUADRUPLICATE.

Attest:

/s/ (Seal) /s/ (Seal)
Superintendent

/s/ (Seal)

/s/ (Seal)
Assistants

(Seal)

(Seal)

(Seal)

* * * * * * * * * * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
(Title Omitted in Printing)

DEFENDANTS' RESPONSE TO PLAINTIFFS' FIRST REQUEST FOR ADMISSION OF FACTS AND GENUINENESS OF DOCUMENTS

Filed January 11, 1978

6.

Sections 34A-102 and 34A-1407(a) of the Georgia Municipal Election Code were precleared by the United States Attorney General as of June 13, 1968, as more fully appears in the copy of the letter from the Justice Department, attached hereto as "Exhibit A".

ANSWER: Defendants admit the truth of Request No. 6.

7.

Georgia Laws 1966, pp. 2375-2378, amending the charter of the City of Rome, were validly enacted by the Georgia General Assembly.

ANSWER: Defendants admit that Georgia Laws 1966, pp. 2375-2378, were validly enacted by the Georgia General Assembly, but have not been precleared under Section 5 of the Voting Rights Act.

8.

Georgia Laws 1966, pp. 2379-2382, amending the Charter of the City of Rome, were validly enacted by the Georgia General Assembly.

ANSWER: Defendants admit that Georgia Laws 1966, pp. 2379-2382, were validly enacted by the Georgia General Assembly, but have not been precleared under Section 5 of the Voting Rights Act.

9.

Georgia Laws 1966, pp. 2382-2386, amending the Charter of the City of Rome, were validly enacted by the Georgia General Assembly.

ANSWER: Defendants admit that Georgia Laws 1966, pp. 2382-2386, were validly enacted by the Georgia General Assembly, but have not been precleared under Section 5 of the Voting Rights Act.



10.

Georgia Laws 1966, pp. 3069-3072, amending the Charter of the City of Rome, were validly enacted by the Georgia General Assembly.

ANSWER: Defendants admit that Georgia Laws 1966, pp. 3069-3072, were validly enacted by the Georgia General Assembly, but have not been precleared under Section 5 of the Voting Rights Act.

11.

Georgia Laws 1966, pp. 2815-2819, amending the Charter of the City of Rome, were validly enacted by the Georgia General Assembly.

ANSWER: Defendants admit that Georgia Laws 1966, pp. 2815-2819, were validly enacted by the Georgia General Assembly, but have not been precleared under Section 5 of the Voting Rights Act.

12.

Georgia Laws 1966, pp. 3083-3087, amending the Charter of the City of Rome, were validly enacted by the Georgia General Assembly.

ANSWER: Defendants admit that Georgia Laws 1966, pp. 3083-3087, were validly enacted by the Georgia General Assembly, but have not been precleared under Section 5 of the Voting Rights Act.

13.

Georgia Laws 1967, pp. 3296-3298, amending the Charter of the City of Rome, were validly enacted by the Georgia General Assembly.

ANSWER: Defendants admit that Georgia Laws 1967, pp. 3296-3298, were validly enacted by the Georgia General Assembly, but have not been precleared under Section 5 of the Voting Rights Act.

14.

Georgia Laws 1970, pp. 2563-2566, amending the Charter of the City of Rome, were validly enacted by the Georgia General Assembly.

ANSWER: Defendants admit that Georgia Laws 1970, pp. 2563-2566, were validly enacted by the Georgia General Assembly, but have not been precleared under Section 5 of the Voting Rights Act.

15.

Georgia Laws 1971, pp. 3664-3666, amending the Charter of the City of Rome, were validly enacted by the Georgia General Assembly.

ANSWER: Defendants admit that Georgia Laws 1971, pp. 3664-3666, were validly enacted by the Georgia General Assembly, but have not been precleared under Section 5 of the Voting Rights Act.



16.

The annexation referred to in Paragraph 38 of Plaintiffs' First Amended Complaint was validly enacted by the Georgia General Assembly.

ANSWER: Defendants admit that the annexation referred to in Paragraph 38 of Plaintiffs' First Amended Complaint was validly enacted by the Georgia General Assembly, but has not been precleared under Section 5 of the Voting Rights Act.

17.

The fifty-nine (59) annexatons referred to in Paragraph 41 of Plaintiffs' First Amended Complaint were validly enacted by either the Georgia General Assembly or the Rome City Commission.

ANSWER: Defendants admit that fifty-nine (59) annexations were validly enacted by either the Georgia General Assembly or the Rome City Commission, but that twelve (12) of those annexations have not been precleared under the Voting Rights Act.

42.

The enactment of laws is an integral and traditional function of the state and local government.

ANSWER: Defendants admit Request No. 42.

43.

The enactment of laws is an integral and traditional function of the City of Rome, Georgia.

ANSWER: Defendants admit Request No. 43.

44.

The conduct of elections is an integral and traditional function of state and local government.

ANSWER: Defendants admit Request No. 44.

45.

The conduct of elections is an integral and traditional function of the City of Rome, Georgia.

ANSWER: Defendants admit Request No. 45.

(Signatures and Certificate of Service Omitted in Printing)

* * * * * * * * * * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DEFENDANTS' RESPONSE TO
PLAINTIFFS' FIRST INTERROGATORIES
(Title Omitted in Printing)

Filed January 11, 1978



Attachment B

Date: November 19, 1970

TO : All Attorneys
Voting & Public Accommodations

FROM : Gerald W. Jones, Chief
Voting & Public Accommodations

SUBJECT : Preliminary Review of
Section 5 Submissions

In the past few weeks several situations have arisen with respect to Section 5 submissions wherein we have been faced, on the eve of the expiration of the 60-day submission period, with the necessity of sending letters to the submitting party advising of some defect which prevents our responding in a substantive way. In order to alleviate this situation recurring, each of you should follow the following procedures when a Section 5 matter is assigned to you.

As soon as you receive the submission, you should give it a preliminary review and analysis to determine whether such things as basic additional and supporting documents are necessary to a proper analysis of the submission, whether or not the submission involves a final enactment if it is legislation, and generally whether the submission is in a form which makes it ripe for the Attorney General's consideration. In Mississippi for instance where state enabling legislation allowing at-large elections for county supervisors was objected to by the Attorney General, the only operable legislation in the state at present authorizes district-by-district elections only. Therefore, should a

submission be received from a Mississippi county which seeks to authorize at-large elections, this should be detected promptly and a proper response to the submitting authority should be prepared without waiting until all or most of the 60-day period has run. Also in Mississippi the enabling legislation on redistricting requires a unanimous vote by the county governing body (Board of Supervisors). Here, too, if less than all five of the county's supervisors have voted for the redistricting plan as submitted, this should be detected right away and responded to. In those instances where the submission as initially submitted is completely inadequate for us to consider because of failure on the part of the submitting party to send appropriate supporting documents and information, this should be detected right away so that they can be asked for and the submitting party can be advised that the 60-day period will not begin to run until such time as the submission is complete. Needless to say it is very embarrassing to have to write a letter of this nature after we have had the submission for 45 or more days.

In view of the foregoing, each of you should confer with either Mr. Gorman or myself within one week of the date your receive a submission with respect to your preliminary review so that we may be advised of any problems which should be taken care of preliminarily.

* * * * * * * * * * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA



DEFENDANTS' RESPONSE TO
PLAINTIFFS' THIRD INTERROGATORIES
(Title Omitted in Printing)

Filed April 14, 1978

Interrogatory No. 32

Please DESCRIBE all facts which Defendants contend support the existence of any of the following in the City of Rome:

(a) Barriers to black registration, with respect to:
  (1) Time and place of registration
  (2) Registration personnel
  (3) Purging and reregistration
(b) Barriers to black voting, with respect to:
  (1) Denying minorities the ballot
  (2) Polling places: location and adequacy
  (3) Election officials
  (4) Inadequate Bilingual information and materials
  (5) The problems of illiterate voters
  (6) Absentee voting
(c) Barriers to black candidacy, with respect to:
  (1) Filing fees
  (2) Obstacles to qualifying
  (3) Campaigning
  (4) Access to voters at the polling place
  (5) Poll watchers
  (6) Counting the vote
  (7) Obstacles to multiracial and multiethnic politics
  (8) Problems of independent and third party candidates

(9) Minimizing the impact of minority success

(d) Physical and economic subordination of blacks

(e) Lack of fair representation of blacks on city boards

Response to Interrogatory No. 32

Defendants have made no contention that they have facts which support the existence or non-existence of the information sought in (a) through (d) above. However, defendants have taken the oral deposition of a number of blacks in the Rome community whose testimony supports the existence of (e) above, that is, there is a "lack of fair representation of blacks on city boards."

(Signatures and Certificate of Service Omitted in Printing)

* * * * * * * * * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
(Title Omitted in Printing)

PLAINTIFFS' SECOND SUPPLEMENT
TO THEIR FIRST AMENDED COMPLAINT

Filed April 17, 1978

Plaintiffs hereby supplement their First Amended Complaint, once supplemented, by adding the following:

I.

After Paragraph 17 and before Paragraph 18 thereof:



"17A".

"When the Georgia Municipal Election Code was submitted to the United States Attorney General as aforesaid, no objection was interposed by him to Section 34A-1407(b), or to Section 34A-902 thereof."

"17B".

"Georgia Code Section 34A-1407(b) provides as follows:

"In instances where no candidate receives a majority of the votes cast and the municipal charter or ordinance does not provide for nomination or election by a plurality vote, a runoff primary or election shall be held, between the two candidates receiving the highest number of votes. Such runoff shall be held on the fourteenth day after the day of holding the first primary or election, unless such runoff date is postponed by court order. Only the electors entitled to vote in the first primary or election shall be entitled to vote in any runoff primary or election resulting therefrom; provided, however, that no elector shall vote in a runoff primary in violation of Section 34A-518. The candidate receiving a majority of the votes cast in such runoff primary or election to fill the nomination or public office he seeks shall be declared the winner. The runoff primary or election shall be a continuation of the first primary or

election and only those votes cast for the two candidates receiving the highest number of votes in the first primary or election shall be counted. No write-in votes may be cast in a primary, runoff primary, or runoff election. If the candidate receiving the highest number of votes withdraws, the remaining candidates receiving the two highest number of votes shall be the candidates in the runoff. If the candidate receiving the second highest number of votes withdraws, no runoff shall be held and the candidate receiving the highest number of votes shall be nominated or elected as the case may be. If any candidate eligible to be in a runoff dies, or one of the two candidates originally receiving the highest number of votes is found to be ineligible, the remaining candidates receiving the two highest number of votes shall be the candidates in such runoff. The candidate receiving the highest number of votes cast in such runoff primary or election to fill the nomination or public office he seeks shall be declared the winner. The name of a write-in candidate eligible for election in a runoff shall be printed on the runoff election ballot in the independent column."

"17C".

"Georgia Code Section 34A-902 provides as follows:



"In the case of a candidate seeking one of two or more public offices each having the same title and to be filled at the same election by the vote of the same electors, charter or ordinance provisions now in effect or hereinafter enacted shall govern whether such candidate shall designate the specific office he is seeking. If required to designate the specific office, the candidate shall name his incumbent or give other appropriate designation. Such designation shall be entered on the ballot and ballot labels in such manner that in the ensuing primary or election such candidate shall only oppose the other candidate or candidates, if any, designating the same specific office."

"17D".

"As of the effective date of the said Georgia Municipal Election Code, and Section 34A-1407(b) thereof, the Charter of the City of Rome did not provide for nomination or election by a plurality vote."

"17E".

"As of the effective date of the Georgia Municipal Election Code, and section 34A-902 thereof, the Charter of the City of Rome provided that a candidate designate the specific office he was seeking, to-wit: Post Number 1, Post Number 2 or Post Number 3 of the ward of his residency."

II.

After Paragraph 58 and before Paragraph 59 thereof:

"58A".

"Because of the facts set out in Paragraphs 17A through 17E hereof, Georgia Laws 1966, Pages 2375-2378, 2382-2386, (the runoff election provision and the numbered post provision for Rome City Commission) and Georgia Laws 1966, pages 2815-2819 (the run-off election provision and the numbered post provision for Rome Board of Education) have already been precleared by the Attorney General and require no further action by Plaintiff City of Rome."

III.

After subparagraph (a) of the prayer of Count III hereof, and before subparagraph (b) of said prayer:

(a)(1) that Georgia Laws 1966, Pages 2375-2378, 2382-2386 (the runoff election provision and the numbered post provision for Rome City Commission) have already been precleared by the Attorney General; and (a)(2) that Georgia Laws 1966, pages 2815-2819 (the run-off election provision and the numbered post provision for Rome Board of Education) have already been precleared by the Attorney General; and"



(Signatures and Certificate of Service Omitted in Printing)

* * * * * * * * * * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
(Title Omitted in Printing)

SECOND SUPPLEMENT TO
PARTIES STIPULATION OF FACTS

Filed April 19, 1978

7. Pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, the State of Georgia submitted Georgia Code Section 34A-902 to the United States Attorney General on May 13, 1968. There was no objection interposed by the Attorney General of the United States to Georgia Code Section 34A-902.

8. Exhibit 44 is except for the attachments thereto which have not been copied, a true, correct and authentic reproduction of the State of Georgia's May 13, 1968 submission of the Georgia Municipal Election Code. Georgia Code Section 34A-902 was included as part of this submission.

10. Exhibit 45 hereto is a true, correct and authentic reproduction of correspondence between the City of Rome and the Department of Justice during the course of the Attorney General's review and reconsideration of those changes submitted pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. While several of these items have previously appeared in the record (see Exhibits C through H contained in paragraphs 46 to 52 of

Plaintiffs' First Request for Admission of Facts and Genuineness of Documents), the parties have included them in this stipulation so as to present in an orderly fashion, the Section 5 correspondence between the City of Rome and the United States.

(Signatures and Certificate of Service Omitted in Printing)

EXHIBIT 44

APPLICATION BY THE
STATE OF GEORGIA TO THE
ATTORNEY GENERAL OF THE
UNITED STATES FOR APPROVAL OF:

THE GEORGIA MUNICIPAL
ELECTION CODE
AND ACT NO. 993
ENACTED IN 1968

THE STATE OF GEORGIA

BY: ARTHUR K. BOLTON
Attorney General

Harold N. Hill, Jr.
Assistant Attorney General

132 Judicial Building
40 Capitol Square
Atlanta, Georgia 30334
525-0401



EXHIBIT INDEX

Appendix A - Georgia Municipal Election Code (Act No. 998, S. B. 151) Annexed

Appendix B - Georgia Election Code, as amended through 1966 (blue cover) Annexed

Exhibit A - Table of Contents of the Municipal Election Code

Exhibit B - Page Proofs of 1968 reprint of the Georgia Election Code

Exhibit C - H. B. 1087 (Act No. 993)

APPLICATION BY THE
STATE OF GEORGIA TO THE
ATTORNEY GENERAL OF THE
UNITED STATES FOR APPROVAL OF:

THE GEORGIA MUNICIPAL
ELECTION CODE
AND ACT NO. 993
ENACTED IN 1968

Now comes the State of Georgia, by and through its Attorney General, and respectfully requests the approval of the Attorney General of the United States of:

The Georgia Municipal Election Code and Act No. 993 enacted at the 1968 Session of the General Assembly of Georgia.

I.

This application and submission is made pursuant to Section 5 of the "Voting Rights Act of 1965", Public Law 89-110, Aug. 6, 1965, 42 U.S.C.A. Section 1973c (which applies to voting qualifications, prerequisites to voting, and standards, practices and procedures with respect to voting).

II.

Heretofore, the laws governing municipal elections have been contained in the charters of the more than 400 incorporated towns and cities in Georgia. These charter provisions as to elections have been amended from time to time (e.g. Abbeville - Ga. Laws 1943, p. 1151; Zebulon - Ga. Laws 1961, pp. 2704, 2707-2714). At the 1961 Session of the General Assembly new charters were enacted for seven municipalities and the existing charters of seven other municipalities were amended as to elections (see Ga. Laws 1961, Vol. II, pp. 3534-3537). As a consequence, there have been as many or more variations in the municipal election laws in Georgia as there are municipalities.

III.

At the 1968 Session of the General Assembly of Georgia, there was enacted the "Georgia Municipal Election Code", a copy of which is annexed hereto as Appendix A, to become effective September 1, 1968, which codifies and makes uniform (see Sections 34A-102 and 34A-104) throughout the State (with certain options hereinafter noted) municipal election laws.



IV.

The Georgia Municipal Election Code is patterned after the Georgia Election Code of 1964, as amended. A copy of the Georgia Election Code as amended through 1966 is annexed hereto as Appendix B. Application for approval of the changes in the Georgia Election Code adopted in 1968 has been made by prior submission. It should be noted that the Georgia Election Code (Appendix B hereto) is not applicable to municipal elections (Code Section 34-102). Attached hereto as Exhibit A is a table of contents of the Municipal Election Code, with a cross-reference index to the Georgia Election Code.

V.

In view of the variety of laws which heretofore existed, no effort will be made herein to set forth the prior laws superseded by the Municipal Election Code. In view of its comprehensive nature, the Municipal Election Code when read in sequence is comprehensible, and therefore only its more significant features will be discussed herein.

VI.

The major areas in which the Municipal Code differs from the Election Code are as follows (The comments below are taken from a Report to the General Assembly from the State Election Board.):

(1) Municipal elections will be held on dates provided now or subsequently in the charter or ordinance of the municipality, rather than on the general election dates. Section 34A-702.

(2) The governing authority of the municipality will appoint the municipal election superintendent, who may or may not be the ordinary of the county. Sections 34A-201(c), 34A-302.

(3) Absentee ballots will be used only if the municipal governing authority elects to use them (If absentee ballots are used, then the general provisions of the Code covering absentee ballots will be applicable, except that an absentee ballot clerk, designated by the governing authority, will handle the applications, witnessing, and other duties normally handled by the county registrar.). Ch. 34A-13.

(4) Whether the majority or plurality rule is in effect in the municipal election will depend upon how the municipality's charter is written at present or may be written in future (i.e., charter may provide that the top 3 or top 5, etc., be elected as city commissioners). Section 34A-1407.

(5) In the same vein, posts need not be designated where more than one person is to be elected unless the municipality's charter now or in the future calls for a majority vote where posts are designated. Section 34A-902.

(6) Partisan or nonpartisan primaries are permitted if the municipality so desires, or only a nonpartisan general election may be provided. Sections 34A-905, 34A-912, 34A-913.



(7) Registration may be provided at the election of the governing authority of the municipality in either one of two ways: (1) Use county registration list, which is submitted to municipality for purging of those not qualified; or, (2) Maintain their own registration system. Sections 34A-501(b), 34A-507, 34A-516(b).

(8) Times for closing registration books depend on whether county list is used or municipality maintains its own list. Closing for county list is 30 days before primary or election. Closing for municipal list shall be as specified by Charter, but at least 15 days and not more than 50 days prior to such primary or election. Section 34A-507.

(9) Provides that candidate in municipal primaries or elections file notice of candidacy at least 15 but not more than 45 days prior to the election in a general election or a general primary, and at least but not more than 30 days prior to the election in case of a special primary or election. Closing date to be set in municipal charter or ordinance. Section 34A-901(a).

(10) Nonpartisan primaries may be called by governing authority if municipality so elects. Date of such primary shall be at least 50 days but not more than 60 days prior to date of municipal election. Candidates shall qualify at least 45 days prior to date of primary, in accordance with privisions of the municipal charter and ordinances. Sections 34A-912, 34A-913.

(11) Governing authority of municipality appoints municipal superintendent and poll officers; designates election districts and polling places, makes rules and regulations (consistent with law and rules of State Election Board); fixes qualifying fees (if any); and, receives election returns. Ballots, tally sheets, and election lists are filed with City Clerk. Sections 34A-201, 34A-904, 34A-1410.

VII.

It is assumed that you will be interested in Chapter 34A-5 of the Municipal Code (Appendix A) relating to registration of electors.

A. Your attention is called to the provision of Section 34A-501(a) which reads as follows:

> "Notwithstanding any other provision of this Chapter, any person who was qualified and registered to vote at the time of the adoption of this Code shall not be required to re-register under the terms of this Chapter unless such person shall have become or becomes disqualified to vote by reason of having been purged from the list of electors or for any other reason whatsoever, in which event, such person shall, in order to become registered to vote, re-register under the terms of this Chapter." (Underscoring added.)

B. Your further attention is called to that provision in Code Section 34A-501(b) which reads as follows:



> "The qualifications of a person seeking to vote in a municipal primary or election shall be determined by the provisions of this Code and of the State Constitution."

It is, of course, recognized, as will be pointed out in more detail hereinafter, that certain provisions of State law and the State Constitution have been superseded by the Voting Rights Act of 1965.

C. Your attention is also called to subsection (c) of Code Section 34A-506 which reads as follows:

> "(c) The main office of the board of registrars in each municipality shall remain open for business during regular office hours on each business day. The board of registrars may enlarge such minimum office hours and may open the offices at any time in order to suit the convenience of the public."

See also the last sentence in subsection (b) of Code Section 34A-506 which provides that:

> "The governing authority in addition to the main office, may designate other places in the municipality to be used for the purpose of receiving applications for registration and for the registration of electors."

D. Section 34A-512, which refers to "qualification test" will bear the notation: "The operation of this section has been suspended by virtue of the Voting Rights Act of 1965. STATE ELECTION BOARD". In addition, the

reprint of the Georgia Election Code (now being printed), containing the amendments through the regular session of 1968, will bear similar notations at Sections 34-617 and 34-618 (referred to in said Section 34A-512 of the Municipal Code), as shown by the copy of page proofs, attached hereto as Exhibit B, of the reprint of the Georgia Election Code.

E. Your attention is called also to Section 34A-1211(b) relating to "Assistance in Voting" which authorizes one person to assist up to five disabled or handicapped voters. This provision is similar to Section 13 of Act No. 997, 1968 General Assembly, amending Code Section 34-1317(b) of the Georgia Election Code, as shown in par. V, subpar. (m)(13), pp. 15-16, of applicant's submission of changes in the Georgia Election Code enacted in 1968.

VIII.

Because there has been a pressing need in Georgia to eliminate the duplication of county and municipal voter registration, in addition to the provisions of the Municipal Election Code authorizing municipalities to use county registration lists (see Code Sections 34A-501(b), 34A-507, and 34A-516(b) of Appendix A hereto), there was enacted at the 1968 Session of the Georgia General Assembly Act No. 993 (H. B. No. 1087), a copy of which is attached hereto as Exhibit C. In addition to the Municipal Election Code, Act No. 993 is submitted with this application for approval.

The Municipal Election Code was approved by the Governor on April 4, 1968, and Act No. 993 was approved the preceding day, April 3, 1968. This sequence was intentional so that if there be any conflict between



Act No. 993 and the Municipal Election Code, the Municipal Code would control. However, no conflict between the two is known to exist.

Act No. 993 provides simply that:

> "The governing authority of municipalities may elect to arrange for the registration of municipal electors by adopting a resolution, or other appropriate measure, providing that any person who is a resident of the municipality and who is registered as an elector with the board of registrars of the county and possesses the qualifications prescribed by laws and Constitution of this State shall be eligible to vote in a municipal primary or election. Upon request, and upon a basis to be agreed upon by the governing authority and the municipality, the board of registrars shall deliver a copy of the electors list to be used in each municipal primary or election to the designee of the governing authority of the municipality at least fourteen (14) days prior to each such primary or election for the purpose of permitting him to check the accuracy of the list to to [sic] challenge the disqualified."

Regarding the first sentence quoted above, compare subsection(b) of Section 34A-501 of the Municipal Code (Appendix A). Regarding the second sentence quoted above, compare subsection (b) of Code Section 34A-516 of the Municipal Code. The phrase "to challenge the disqualified", as it appears in Act No. 993 and in Code Section 34A-516(b), is primarily intended to permit the municipality to remove from the

list supplied by the county board of registrars the names of any persons who reside in the county but not in the city, or who have not resided in the city for at least ninety (90) days next preceding the date of the municipal primary or election (see App. A, Code Section 34A-501[a]).

IX.

It is the position of the applicant that many of the provisions of the Municipal Election Code are not within the scope of Section 5 of the Voting Rights Act of 1965. However, out of an abundance of caution, applicant herewith submits for approval the Municipal Election Code in its entirety and Act No. 993 referred to in paragraph VIII.

X.

Applicant shows that the foregoing Code and Act do not have as their purpose, and will not have the effect of, denying or abridging the right to vote, on account of race or color or otherwise. On the contrary, they have as their purpose and effect the extension, facilitation and protection of the right to register and vote.

XI.

Georgia has no official record of its legislative proceedings which would be useful in ascertaining the legislative history and intent of its enactments. However, this office will furnish any requested material or information which might be helpful in reviewing the foregoing.



This 14th day of May, 1968

Respectfully submitted,

THE STATE OF GEORGIA

BY /s/
ARTHUR K. BOLTON
Attorney General

Harold N. Hill, Jr.
Assistant Attorney General

132 Judicial Building
40 Capitol Square
Atlanta, Georgia 30334
525-0401

EXHIBIT 45

CITY OF ROME
GEORGIA

June 13, 1974

Robert M. Brinson
City Attorney

Assistant Attorney General
Civil Rights Division

Department of Justice
Washington, D.C. 20530

Re: City of Rome, Georgia
Civil Rights Act

Gentlemen:

Although the within described annexation was effected by the State Legislature, I am unaware of any submission to you; therefore, I herewith submit an annexation changing the boundaries of the City of Rome.

Yours very truly,

/s/
ROBERT M. BRINSON

RMB/ja
enclosure

APPLICATION BY CITY OF ROME, GEORGIA, TO THE ATTORNEY GENERAL OF THE UNITED STATES FOR THE APPROVAL OF CERTAIN CHANGES IN THE ELECTION PROCEDURE (SUBMISSION UNDER SECTION 5, VOTING RIGHTS ACT)

CITY OF ROME, GEORGIA

BY: _____
CITY ATTORNEY

P.O. Drawer N
Rome, Georgia 30161



Now comes the City of Rome, Georgia by and through its City Attorney and respectfully requests the approval of the Attorney General of the United States of the following boundary change.

1.

This application and submission is made pursuant to Section 5 of the Voting Rights Act of 1965, Public Law 89-110, August 6, 1965, 42 USC Section 1973C.

2.

The 1973 General Assembly of the State of Georgia passed an Act incorporating into the corporate limits of the City of Rome certain tracts of land. A copy of said Act with descriptions of said tracts is attached hereto as Exhibit "A".

3.

Said annexations consisted of industrial areas and a larger area, known locally as "the Old Airport Community," which had theretofore been an unincorporated "island" completely surrounded by the City of Rome. Said area was without city services, including sewerage, and there was an existing opinion that the area was growing hazardous to public health and, moreover, that logically it should be incorporated into the City.

4.

The annexations were accomplished to remedy the effect of abandonment of the area and to extend needed city services thereto.

5.

The changes did not have as their purpose, and will not have the effect of denying or abridging the right to vote on account of race, color or otherwise.

6.

The applicant has no other information or supporting materials to assist the Attorney General in his consideration, but will endeavor to furnish material or information requested.

Respectfully submitted,

THE CITY OF ROME, GEORGIA

BY: /s/ P. O. Drawer N
Rome, Georgia 30161

EXHIBIT "A"

GEORGIA LAWS 1973 SESSION

CITY OF ROME-CHARTER
AMENDED-CORPORATE LIMITS
CHANGED.

No. 603 (House Bill No. 984)

An Act to amend an Act creating a new charter for the City of Rome, approved August 19, 1918 (Ga. L. 1918, p. 813), as amended, so as to change and extend the corporate limits of said City; to repeal conflicting laws; and for other purposes.



Be it enacted by the General Assembly of Georgia:

Section 1. An Act creating a new charter for the city of Rome, approved August 19, 1918 (Ga. L. 1918, p. 813), as amended, is hereby amended by extending and increasing the corporate limits of the City of Rome so as to include and annex to said corporate limits the following described tracts of property, to wit:

TRACT ONE

All of that tract or parcel of land lying and being in the 4th District and 4th Section of Floyd County, Georgia, and being a part of Land Lot 127, and being more particularly described as follows: BEGINNING at the point where the North line of Land Lot 127 intersects the West right-of-way line of Lavendar Drive and running thence West along said Land Lot line 1145 feet, more or less to the point where the North right-of-way line of the Southern Railroad intersects said Land Lot line; running thence Easterly following the north right-of-way line of the Southern Railroad to the point where said line intersects the West right-of-way line of Lavendar Drive and running thence North along the West right-of-way line of Lavendar Drive to the point of beginning, and containing 3.4 acres, more or less.

TRACT TWO

All of that tract or parcel of land lying and being in the 4th District and 4th Section of Floyd County, Georgia, and being parts of Land Lots 126 and 127, and more particularly described as follows: BEGINNING at the point where the Spur Track of the Southern Railroad, serving the Rome Frozen Foods property, intersects the East right-of-way line of Lavendar Drive, just South of the North line of Land Lot 127, and running thence Northerly along the present City limit line of the City of Rome to the point where said City limit line intersects the South City limit line of the Trend Mill property, and running thence West approximately 515 feet, more or less, to the East right-of-way line of Lavendar Drive; thence running along said East right-of-way line of Lavendar Drive Southerly to the point of beginning, containing 4.42 acres, more or less, according to a plat of the same in Deed Book 336, page 387 (Rome Foods, Inc.) and (Southern Railroad), of the Deed Records of Floyd County, Georgia.

TRACT THREE

All of that tract or parcel of land lying and being in the 4th District and 4th Section of Floyd County, Georgia, and being parts of Land Lots 127, 128, 125, 161, 124 and 129,



in said District and Section, and BEGINNING at the point where the right-of-way of the Central of Georgia Railroad intersects the East right-of-way line of the Airport Road; and running thence South along the East right-of-way line of the Airport Road, to the point where the same intersects the North right-of-way line of the Southern Railroad right-of-way and running thence along the North right-of-way line of the Southern Railroad, Easterly to the point where the present City limit line intersects the North right-of-way of the Southern Railroad and thence following the present City limit line of the City of Rome, Georgia, to the East right-of-way line of Watson Street; thence running Northerly along the East right-of-way line of Watson Street and Indiana Drive, to the point where the present City limit line intersects the South right-of-way line of the Central of Georgia Railroad; thence following the South right-of-way line of the Central of Georgia Railroad Westerly to the point of beginning.

TRACT FOUR

All of that tract or parcel of land lying and being in the 4th District and 4th Section of Floyd County, Georgia, and being parts of Land Lots 128, and 129 and 161, and being more particularly described as BEGINNING at the intersection of the West right-of-way line of Kirton Street

with the North right-of-way line of Shorter Avenue, and running thence along the West right-of-way line of Kirton Street Northerly to the South right-of-way line of the Southern Railroad and thence following the South right-of-way line of the Southern Railroad Westerly to the intersection of said right-of-way line with the East right-of-way line of the Old Airport Road; thence following the East right-of-way line of the Old Airport Road southerly to the point where it intersects with the North right-of-way line of Shorter Avenue; thence following the North right-of-way line of Shorter Avenue Easterly to the point of beginning.

TRACT FIVE

All of that tract or parcel of land lying and being in the 4th District and 4th Section of Floyd County, Georgia, and being parts of Land Lots 128, 129, 124, 125, 160 and 161, and more particularly described as follows: BEGINNING at a point where the East right-of-way line of the Old Airport Road intersects the North right-of-way line of Shorter Avenue, and running thence Northerly along the East right-of-way line of the Old Airport Road, to the point where it intersects the South right-of-way line of the Central of Georgia Railroad; running thence along the South right-of-way line of the Central of Georgia Railroad, Westerly to the



point where the present City limit line of Rome, Georgia, intersects said South right-of-way line of said Railroad and thence following the present City limit line of the City of Rome, to the North right-of-way line of Shorter Avenue; running thence along the North right-of-way line of Shorter Avenue to the point of beginning.

Section 2. All laws and parts of laws in conflict with this Act are hereby repealed.

Notice of Intention to Introduce Local Legislation. Georgia, Floyd County.

Notice is hereby given that there will be introduced at the 1973 Session of the General Assembly of Georgia, a local Bill to amend the Act creating a new Charter and Municipal government for the City of Rome, approved August 19th, 1918, (Ga. L. 1918, p. 813), as amended, so as to change and extend the Corporate Limits of said City and for other purposes.

This 7th day of February, 1973.

John Adams
Representative,
14th District
Sidney Lowrey
Representative
15th District
Representative,
16th District

Sam Doss
Senator
52nd District

Georgia, Fulton County.

Personally appeared before me, the undersigned authority, duly authorized to administer oaths, John Adams who, on oath, deposes and says that he is Representative from the 14th District, and that the attached copy of Notice of Intention to Introduce Local Legislation was published in the Rome News-Tribune which is the official organ of Floyd County, on the following dates: February 8, 15, 22, 1973.

John Adams
Representative,
14th District

Sworn to and subscribed before me, this 26th day of February, 1973.

/s/ Susan Gordon
Notary Public, Georgia
State at Large
My Commission Expires Dec. 18, 1976.
(Seal).

Approved April 17, 1973.



DEPARTMENT OF JUSTICE
WASHINGTON, DC 20530

Mr. Robert M. Brinson
City Attorney
City of Rome
P.O. Drawer N
Rome, Georgia 30161

Dear Mr. Brinson:

This letter will confirm your telephone conversation of July 19, 1974, with Departmental Attorney Charles Aycock regarding your recent submission of a 1973 annexation to the City of Rome, Georgia. This annexation was submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, and received by this Department on June 15, 1974.

The information you provided to Mr. Aycock by telephone indicated that there have been a number of annexations to the City of Rome since 1964 which have not been submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act. If this information is correct, it is necessary that each of these annexation changes either be brought before the United States District Court for the District of Columbia or submitted to the Attorney General. A change of this nature which affects voting is unenforceable unless and until the Section 5 preclearance requirements have been met.

In order to expedite consideration of this submission a preliminary review of the information you have provided was made and it was determined that in order for you to provide us with a completed submission on the 1973

annexation, it will be necessary for you to provide us with the following information:

1. A map of the City of Rome clearly showing the corporate boundaries prior to the 1973 annexation, the annexed areas, and the population by race within the existing city limits and in the annexed areas.

2. A map or maps showing all past annexations, dates of these annexations, and all proposed annexations since 1964. Also, the populations by race in each one of the annexed areas or proposed annexations.

3. Current development of the 1973 annexed areas and expected future development of these areas.

4. A map of the City of Rome showing the city election wards before the 1973 annexation and the city wards after the annexation.

5. The method of electing all elected city officials, i.e., city commissioners, school board officials, etc. for Rome, and whether any blacks have run for election since 1965.

6. Whether any areas has sought annexation and been denied, and, if so, what areas and why was annexation denied.

The above requested information should be provided for each prior annexation submitted to the Attorney General pursuant to Section 5.



For your information I have enclosed a copy of the procedures for the administration of Section 5 of the Voting Rights Act of 1965. If you have any questions regarding any matters discussed in this letter, and if we may be of other assistance to you, please feel free to telephone Mr. Aycock (202-739-2158), the attorney who has been assigned to this matter.

Sincerely,

/s/
J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

CITY OF ROME
GEORGIA

February 7, 1975

Robert M. Brinson
City Attorney

Mr. J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division
Department of Justice
Washington, D.C. 20530

RE: Civil Rights Division - Attorney General submissions - City of Rome Annexations, Inc.

Dear Mr. Pottinger:

I am sorry to have been so long with accumulating the information you desired in connection with the annexations of the City of Rome since 1965. The call from the local FBI Agent was a good reminder to me.

I have enclosed a map of the City of Rome plotting the annexations over that period of time. I have also enclosed a copy of a letter from the City Manager indicating the population in the "Old Airport Community Area".

Still further, if you will refer to the map, the City of Rome is divided into three wards established by the three rivers, the first ward being between the Oostanaula River and the Etowah River, the second ward being between the Etowah River and the Coosa River and the third ward being between the Coosa River and the Oostanaula River. There are nine City Commissioners and six members of the Board of Education, three and two from each ward respectively, but all elected at large over the City.

If you desire further information, please let me know.

Yours very truly,

/s/
Robert M. Brinson

bbo
Enclosure



DEPARTMENT OF JUSTICE
WASHINGTON, DC 20530

Mr. Robert M. Brinson
City Attorney
P.O. Drawer N
Rome, Georgia 30161

Dear Mr. Brinson:

This will confirm your telephone conversation of February 24, 1974, with Departmental attorney Frederick J. McGrath concerning your submission, under Section 5 of the Voting Rights Act of 1965, of sixty annexations to the City of Rome, Georgia. These annexations were received on February 10, 1975, and were submitted in response to a July 24, 1974, communication from this Department in which we requested that all the municipal annexations accomplished since 1964 either be submitted to the Attorney General or to the United States District Court for the District of Columbia.

A review of the material received on February 10th reveals that certain information which we requested in our communication of July 24, 1974, has not, as of this writing, been provided. Accordingly, as was requested in our letter of July 24, 1974, and by Mr. McGrath on February 24, 1975, would you please assist us by providing this Department with the following information:

(1) Population figures, by race, for each of the sixty areas annexed to the City of Rome since 1964. If exact figures are not avail-

able, please forward to this office your best estimates of the population totals involved.

(2) Whether any area has sought annexation and has been denied, and, if so, what area and why was annexation denied.

In addition, would you please provide us with the number of registered voters, by race, for each of the sixty areas annexed to the City of Rome since 1964. I understand that you indicated to Mr. McGrath in your telephone conversation that you may be able to either provide these figures or provide your best estimates of the number of registered voters involved. Apart from the above, we would need any information you might have relative to either the past and/or the projected use of the annexations involved in this submission.

The Attorney General has a 60-day period to consider submissions pursuant to Section 5 of the Voting Rights Act of 1965. This time period will begin to run upon receipt of the additional information necessary to evaluate the annexations referred to above. If you have any questions, please do not hesitate to contact Mr. McGrath, the attorney assigned to handle this submission. His telephone number is 202--739-4489.

Before concluding, I note in your conversation of February 24, 1975, with Mr. McGrath that you indicated that the method of electing members to the City Commission and Board of Education was changed in either 1961 or 1966. Our records fail to show that this



change has been submitted to the United States District Court for the District of Columbia for judicial review or to the Attorney General for administrative review as is required by Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973. If the change was made at any time after November 1, 1964, it is necessary that it either be brought before the District Court for the District of Columbia or submitted to the Attorney General. Changes, such as this, which affect voting are unenforceable unless and until the Section 5 preclearance requirements have been met. Accordingly, would you please advise us of the exact date when the method of electing members to the City Commission and the Board of Education was changed and, if such method was changed on or after November 1, 1964, would you please advise us of your intended course of action.

Sincerely,

/s/
J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

CITY OF ROME
GEORGIA

February 5, 1975

Bruce Hamler
City Manager

Mr. Robert M. Brinson
P.O. Box 5513
Rome, Georgia 30161

RE: City of Rome
Annexations, etc.

Dear Bob:

We have checked the number of homes in the Old Airport Community and find that there are 206 homes on our tax digest. We believe an average of about three persons per dwelling would be a fair estimate so that would be a fair estimate so that would indicate about 618 people in the area which was annexed in 1973. There are 297 registered voters in the annexed area. As to how many blacks are in the area, we have checked this out as best we could and find no blacks in the area. This was not a house to house census but a good check of the area.

Sincerely,

CITY OF ROME

/s/
Bruce Hamler
City Manager

BH:fd

CITY OF ROME
GEORGIA



March 14, 1975

Robert M. Brinson
City Attorney

Mr. J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division
Department of Justice
Washington, D.C. 20530

Mr. Fredrick J. McGrath
Departmental Attorney
Department of Justice
Washington, D.C. 20530

RE: City of Rome

Gentlemen:

I have the letter of Mr. Pottinger of March 6, 1975. The personnel of the City is presently undertaking to research and assimilate the desired information and we should be forwarding it to you within the next few weeks.

In the meantime, I am enclosing herewith the City Manager's letter previously referred to but omitted from my letter to the Justice Department of February 7, 1975.

Also in the meantime, it would appear that the change in the Wards of the City of Rome was effected in 1966. Consequently, we apparently will have to submit the change to the Attorney General, and anticipate doing so in connection with all the present undertakings.

We appreciate your continued assistance in this matter.

Yours very truly,

/s/
Robert M. Brinson

RMB/gm
Enclosure
cc: Mr. Bruce Hamler

CITY OF ROME
GEORGIA

May 28, 1975

Robert M. Brinson
City Attorney

Mr. Frederick J. McGrath
Mr. J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division
Voting Section
Department of Justice
550 11th Street, N.W.
Washington, D.C. 20530

RE: City of Rome Compliance
Voting Rights Act

Dear Sirs:



Pursuant to your letter of March 6, 1975, the City of Rome has set about to obtain the additional information you requested.

I have enclosed herewith a composite list of the annexations showing our best estimates of the population figures, by race, for each of the areas, together with the number of registered voters in the areas. The use (zoning) of each area is shown at the far right of the list (R meaning residential, C meaning commercial, O meaning office and M meaning manufacturing).

Two areas sought annexation by the City of Rome, and annexation was not effected. An area of Rome contiguous to the City Limits known as the "Garden Lakes area" held a referendum wherein the vote was against annexation. The owner of a mobile home park petitioned the City Commission for annexation, but the City denied annexation because of the crowded school condition and objections of adjacent property owners.

Rev. Clyde Hill, Sr. ran for the office of School Board member on December 1, 1970. Rev. Hill is a black and was one of two who participated in a run-off election December 15, 1970. Dr. Sara Hoyt received 1,409 votes, Rev. Hill received 1,142 votes. Rev. Hill has since moved away. No other black has offered for the City Commission or the School Board.

The number of wards and the method of electing members to the Rome City Commission and the Rome Board of Education was changed in 1966 by legislative act.

I trust this is the information you require, and if we can be of any further assistance, please let me know.

Yours very truly,

/s/
Robert M. Brinson

bbo
Enclosure

| | | | | | |
|---|---|---|---|---|---|
| 1 | 45 | 0 | 20 | Saddle Mountain-DuPre | R1A |
| 2 | 20 | 0 | 10 | Holmes Acres-East 11th Extension | R1A |
| 3 | 20 | 0 | 10 | Lyons Drive-West Rome-Ala. Road | R1B |
| 4 | 0 | 0 | 0 | G.E. Plant & Site | M2 |
| 5 | 5 | 0 | 2 | Brookwood Estates-Burnett Ferry Rd. | R1A |
| 6 | 3 | 0 | 2 | Maplewood-Jack Anderson | R1A |
| 7 | 3 | 0 | 2 | East 17th Street-Maurice Gann | R1B |
| 8 | 4 | 0 | 2 | Off Saddle Mountain-Jack Busbin | R1B |
| 9 | 0 | 0 | 0 | Georgian & Old Salem Apartments | R2C |
| 10 | 0 | 0 | 0 | 3 lots Lenox Circle-Traylor | R1B |
| 11 | 8 | 0 | 4 | East 11th St.-Rogers & Culbreth | R1A |
| 12 | 0 | 0 | 0 | Briarcliff Road-Mt. View Annex | R1A |
| 13 | 45 | 0 | 27 | Battey Hospital | R1B |
| 14 | 4 | 0 | 2 | One lot | R-2 |



| | | | | | |
|---|---|---|---|---|---|
| 15 | 3 | 0 | 1 | Catholic School & Home | R1A |
| 16 | 0 | 0 | 0 | Maplewood Square | R1B |
| 17 | 4 | 0 | 2 | One lot - Bob Cescutti | R1B |
| 18 | 12 | 0 | 7 | Garden Lakes Rolling-wood Area | R1A |
| 19 | 0 | 0 | 0 | Commercial (Commerce Park) | C3 |
| 20 | 0 | 0 | 0 | Berkshire Estates | R1B |
| 21 | 0 | 0 | 0 | Darlington Sch. Strip Land, Furnace Rd. | R1A |
| 22 | 0 | 0 | 0 | Commercial - Keller Dye Co. | M1 |
| 23 | 3 | 0 | 1 | Waste Treatment Plant (City) | M2 |
| 24 | 0 | 0 | 0 | North Heights Elem. School (City) | C2 |
| 25 | 0 | 0 | 0 | Beakert Steel Co. | M2 |
| 26 | 2 | 0 | 2 | G.L. Sutton, Black's Bluff Road | R1A |
| 27 | 5 | 0 | 3 | 1 Lot Atteiram Sub-division | R1A |
| 28 | 0 | 0 | 0 | Commercial - Coosa Baking Co. | M1 |
| 29 | 0 | 0 | 0 | Commercial - Integrated Products | M1 |
| 30 | 0 | 0 | 0 | Commercial - Southern Wholesale | M2 |
| 31 | 3 | 0 | 1 | Westwood Sub. Clyde Chester | R1A |
| 32 | 0 | 0 | 0 | Fox Mfg. Co. Com-mercial, Old Lindale Rd. | M1 |
| 33 | 0 | 0 | 0 | Berry Schools Comm., John Maddox Dr. | C1 |
| 34 | 0 | 0 | 0 | Hosp. Corp. of America Redmond Park Hospital | OI |
| 35 | 3 | 0 | 2 | Fellowship Baptist Church | R1 |
| 36 | 0 | 0 | 0 | Road Strip (Burnett Ferry Road) | C1 |

| | | | | | |
|---|---|---|---|---|---|
| 37 | 0 | 0 | 0 | Strip Road Old Lindale Road | C1 |
| 38 | 0 | 0 | 0 | Ramada Inn-Chas. Williams & Smith | C1 |
| 39 | 0 | 0 | 0 | W.A. DuPre-Rockmart Road | C1 |
| 40 | 0 | 0 | 0 | Westminister Apts., Harry Butler | R2 |
| 41 | 0 | 0 | 0 | Williamson Street-Chas. Williams | OI |
| 42 | 1 | 0 | 1 | End East 11th St.-Billy Towers | R1A |
| 43 | 0 | 0 | 0 | Castle Cove Subdivision Area | R2 |
| 44 | 0 | 0 | 0 | Saddle Mt. #3, Howell & Covington | R1A |
| 45 | 0 | 0 | 0 | Oostanaula River Pumping Station (City) | R2 |
| 46 | 0 | 0 | 0 | V.E. Anderson, Gateway | M1 |
| 47 | 0 | 0 | 0 | Waste Treatment Plant (City) | M1 |
| 48 | 0 | 0 | 0 | Turner Frozen Foods, Rockmart Road | C1 |
| 49 | 0 | 0 | 0 | Commercial Garden Lakes Inds. Blvd. | M1 |
| 50 | 0 | 0 | 0 | Red Diamond-Alabama Rd. | M1 |
| 51 | 0 | 0 | 0 | Commercial, East Gate, Dodd Blvd. | C3 |
| 52 | 0 | 0 | 0 | Saddle Mt. #4, Bill DuPre | R1A |
| 53 | 927 | 0 | 430 | Old Airport Community-Legislature | R1B & M1 |
| 54 | 0 | 0 | 0 | East Gate #2, Hwy. 411 Howell & Covington | C3 |
| 55 | 0 | 0 | 0 | Maplewood Park-Munchak | R1A |
| 56 | 0 | 0 | 0 | Hwy. 411 Woodfin Turner Property | OI |



| | | | | | |
|---|---|---|---|---|---|
| 57 | 0 | 0 | 0 | Hidden Valley, Howell & Covington | R1B |
| 58 | 0 | 0 | 0 | Commercial Coca Cola Co. Barron Corp. | M1 |
| 59 | 0 | 0 | 0 | Commercial Pharr Yarns, Huffacre Road | M1 |
| 60 | 0 | 0 | 0 | National City Bank, Martha Berry Blvd. | C1 |

DEPARTMENT OF JUSTICE
WASHINGTON, DC 20530

August 1, 1975

Mr. Robert M. Brinson
City Attorney
P.O. Drawer N
Rome, Georgia 30161

Dear Mr. Brinson:

This is in reference to the 60 annexations to the City of Rome, Georgia, submitted to the attorney General pursuant to Section 5 of the Voting Rights Act of 1965.

In examining annexations under Section 5 of the Voting Rights Act, it is incumbent on the Attorney General to determine whether the annexations, either in purpose or effect result in racial discrimination in voting. Moreover, under the procedural guidelines for the administration of Section 5, the burden of proving that such discriminatory purpose or effect does not exists lies with the submitting authority. Georgia v. United States, 411 U.S. 526 (1973); City of Richmond v. United States,

43 U.S.L.W. 4865 (June 24, 1975); City of Petersburg v. United States, 354 F. Supp. 1021 (D.D.C. 1972) aff'd 410 U.S. 962 (1973).

As part of our present examination, our analysis has revealed that during the period of time when these annexations took effect, the manner in which members were elected to the city commission and the city school board was substantially changed. Because these electoral changes are indispensable to an evaluation of the voting effects of these annexations, we are unable to conclude that the annexations under review have no discriminatory effect absent a submission of these changes in the manner of electing commission and school board members. Accordingly, as is provided for in the Section 5 guidelines, 28 C.F.R. 51.19, and consistent with the above-described burden of proof requirements, I must on behalf of the Attorney General interpose an objection to the annexations submitted for review.

With respect to the above, the Attorney General will reconsider his determination, upon receipt of a submission of the changes undertaken in the election of the city commission and the city school board.

Of course, as provided by Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these annexations have neither the purpose nor effect of denying or abridging the right to vote on account of race or color. However, until such a judgment is rendered by that court, or until the objection has been withdrawn by the Attorney General, the legal effect of the objection by the



Attorney General is to render the annexations in question legally unenforceable insofar as they affect voting in the City of Rome.

Sincerely,

/s/
J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

CITY OF ROME
GEORGIA

August 19, 1975

Robert M. Brinson
City Attorney

Mr. J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division
Department of Justice
Washington, D.C. 20530

Dear Mr. Pottinger:

Enclosed herein please find the original and one copy of the following documents:

Application by City of Rome, Georgia to the Attorney General of the United States for the Approval of Certain Acts of the General Assembly Passed

to Effect Certain Electoral Changes in City of Rome Elections (Submission under Section 5, Voting Rights Act)

Motion for Reconsideration of Application (Submission under Section 5, Voting Rights Act)

Thank you very much.

Yours very truly,

/s/
Robert M. Brinson

bbo
Enclosures
cc: Mr. Bruce Hamler

APPLICATION BY CITY OF ROME, GEORGIA TO THE ATTORNEY GENERAL OF THE UNITED STATES FOR THE APPROVAL OF CERTAIN ACTS OF THE GENERAL ASSEMBLY PASSED TO EFFECT CERTAIN ELECTORAL CHANGES IN CITY OF ROME ELECTIONS (SUBMISSION UNDER SECTION 5, VOTING RIGHTS ACT)

CITY OF ROME, GEORGIA

BY: /s/
CITY ATTORNEY

Now comes the City of Rome, Georgia by and through its City Attorney and respectfully requests the approval of the Attorney General of the United States of the following electoral changes.



1.

This application and submission is made pursuant to Section 5 of the Voting Rights Act of 1965, Public Law 89-110, August 6, 1965, 42 USC Section 1973C.

2.

The General Assembly of the State of Georgia passed certain Acts in 1966, 1967, 1970 and 1971, which were concerned with the composition of the government of the City of Rome, with the Board of Education of said City and with certain election procedures.

3.

Georgia Laws 1966, pp. 2375-8, a copy of which is attached hereto as Exhibit "A", amended the Charter of the City of Rome, (Ga. Laws 1918, p. 813) to provide for the offices of city commissioners as follows: One commissioner from one of three posts in each of three wards.

4.

Georgia Laws 1966, pp. 2379-82, a copy of which is attached hereto as Exhibit "B", amended the Charter of the City of Rome, (Ga. Laws 1918, pp. 813-885, as amended by Ga. Laws 1929, pp. 1254-1276) to provide for the reduction in the number of wards from Nine (9) to three (3).

5.

Georgia Laws 1966, pp. 2382-2386, a copy of which is attached hereto as Exhibit "C", amended the Charter of the City of Rome, (Ga. Laws 1918, pp. 813-885) to provide for the qualifications and salary of commissioners, for organization of the commission and for election by posts in each of three wards.

6.

Georgia Laws 1966, pp. 3069-3072, a copy of which is attached hereto as Exhibit "D", amended the Charter of the City of Rome, (Ga. Laws 1918, pp. 813-885) to remove restrictions from voter qualifications.

7.

Georgia Laws 1966, pp. 2815-2819, a copy of which is attached hereto as Exhibit "E", amended the Charter of the City of Rome, (Ga. Laws 1918, pp. 813-885) to provide for the city board of education and for the election of members to said board by posts with two posts for each of three wards.

8.

Georgia Laws 1966, pp. 3083-3087, a copy of which is attached hereto as Exhibit "F", amended the Charter of the City of Rome, (Ga. Laws 1918, pp. 813-885) to make provisions for the nomination of candidates in city elections and for the conduct of primaries and elections. This section was entirely superseded by the Georgia Municipal Election Code in 1968.



9.

Georgia Laws 1967, pp. 3296-3298, a copy of which is attached hereto as Exhibit "G" corrected a typographical error in Georgia Laws 1966, pp. 2375-2378.

10.

Georgia Laws 1970, pp. 2563-2566, a copy of which is attached hereto as Exhibit "H", amended the Charter of the City of Rome, (Ga. Laws 1918, pp. 813-885, as amended by Ga. Laws 1966, p. 2375) to change the election date of city commissioner elections and to provide for conduct of run-off elections.

11.

Georgia Laws 1971, pp. 3664-3666, a copy of which is attached hereto as Exhibit "I", amended the Charter of the City of Rome, (Ga. Laws 1966, p. 2815) to change the election date of City Board of Education members and to provide for conduct of run-off elections.

12.

Copies of pertinent sections of Ga. Laws 1918 and of Ga. Laws 1929, hereinbefore referred to, are attached hereto as Exhibits "J" and "K", respectively.

13.

Said electoral changes were effected in an attempt to equalize the representation among commissioners and among members of the City Board of Education and in order to provide continuity of membership through staggered terms of members of those boards.

14.

The changes did not have as their purpose, and will not have the effect, of, denying or abridging the right to vote on account of race, color or otherwise.

15.

This Application was not made sooner because local counsel was unaware of the requirement of submission of laws passed by the State Legislature.

16.

The applicant has no other information or supporting materials to assist the Attorney General in his consideration, but will endeavor to furnish material or information requested.

Respectfully submitted,

THE CITY OF ROME, GEORGIA

BY: /s/
ROBERT M. BRINSON
CITY ATTORNEY

P.O. Box 5513
Rome, Georgia 30161
(404) 234-0853



DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20530

October 20, 1975

Mr. Robert M. Brinson
City Attorney
P.O. Drawer N
Rome, Georgia 30161

Dear Mr. Brinson:

This is in reference to your request that this Department reconsider its August 1, 1975, objection under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, to sixty annexations to the City of Rome and your submission to the Attorney General of those changes in the manner in which individuals are elected to the City Commission and the Board of Education which have taken place since November 1, 1964. Your request for reconsideration and your submission of the municipal electoral changes were both received on August 21, 1975.

As I indicated in my letter of August 1, 1975, an examination of the changes which have been made in the manner of electing city commission and school board members is indispensable to an evaluation of voting effects of the annexations in question. We therefore find it appropriate to review those electoral changes before revisiting the annexation issues.

We have given careful consideration to the information supplied as well as the data compiled by the Bureau of the Census and information and comments from interested parties. In addition we have considered the infor-

mation and data which you previously provided this office in connection with your earlier submission of sixty municipal annexations. After a careful examination of all the facts available to us and an analysis of recent court decisions, we are unable to conclude, as we must under the Voting Rights Act, that the imposition of the majority-vote requirement, numbered posts, and staggered terms for commissioner and board of education elections and the residency requirement for board of education elections will not have a racially discriminatory effect in the context of the at-large elections that presently exist.

Recent Supreme Court decisions, to which we feel obligated to give great weight, indicate that the combination of the above features would have the effect of abridging minority voting rights in the City of Rome. The reasoning of these recent cases is illustrated by the Supreme Court's decision in June of 1973 which held that a multi-member election system, numerical posts and majority vote requirement of Dallas and Bexar Counties, Texas, tended to abridge minority voting power in contravention of the constitution. White v. Regester, 412 U.S. 755 (1973). See also, Whitcomb v. Chavis, 403 U.S. 124 (1971). That these features have a deleterious effect on the right of blacks in Rome, a majority white city, to elect a candidate of their choice is illustrated to some extent by the situation in 1970 when, according to our information, a black candidate for school board received the highest vote among 4 candidates in the primary but lost to a white opponent in the run-off.



On behalf of the Attorney General, therefore, I must interpose an objection to the imposition of the majority vote requirement, numbered posts, and staggered terms in commissioner and school board elections and the imposition of a residency requirement in board of education elections.

We turn now to a reconsideration of the sixty annexations to which an objection was interposed previously. As indicated at the time of that objection, it is the Attorney General's responsibility in examining annexations under Section 5 to determine whether the annexations, either in purpose or effect, result in racial discrimination in voting. In making this evaluation we apply the legal principles which the courts have developed in the same or analogous situations. Since Section 5 only relates to changes affecting voting our proper concern is not with the validity of the annexations as such but with the changes in voting which flow from them.

With this understanding of the Attorney General's role under Section 5 in mind, I can advise you that the Attorney General will withdraw the objection previously interposed to 47 of the annexations submitted.[1] Our analysis reveals that these 47 annexations involve either areas that are not populated or areas that

---

[1] Those annexations which, according to your letter dated May 28, 1975, bear parcel numbers 4, 5, 6, 7, 8, 10, 11, 12, 14, 15, 17, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41, 42, 44, 45, 46, 47, 48, 49, 50, 51, 54, 55, 56, 57, 58, 59, and 60.

populations of which would have a most a de minimus effect on minority voting strength.

With regard to the other 13 annexations we cannot reach a like conclusion.[2] We have carefully examined these annexations in light of the information initially provided, the electoral changes which have been submitted and federal court decisions which have involved questions of the racially dilutive effect of annexations where political subdivisions conduct elections on an at-large basis. City of Richmond v. United States, 43 U.S.L.W. 4865 (June 24, 1975); City of Petersburg v. United States, 354 F. Supp. 1021 (D.D.C. 1972) aff'd 410 U.S. 962 (1973). According to the data received, virtually all of the individuals residing in the annexed areas are white. Our information regarding elections in Rome demonstrates that the city elects its commission and education officials on an at-large basis and that racial bloc voting exists generally. In addition, the City has sought to add to its election system the majority vote requirement and other features found here earlier to be objectionable by the Attorney General.

Under these circumstances, and commensurate with the decisions cited above, we cannot conclude that the 13 annexations in question do not have a racially dilutive effect on voting in Rome. Accordingly, the objection interposed on August 1, 1975, to these 13 annexations will not be withdrawn. In this connection, however, should the city undertake again to elect its councilmen and board of education members by a simple plurality - win

---

[2] Those annexations which, according to your 1, 2, 3, 9, 13, 16, 18, 20, 39, 40, 43, 52 and 53.



system, which does not incorporate the limiting features herein objected to, or from fairly drawn single-member districts the Attorney General will again reconsider his determination of this matter.

Of course, Section 5 permits seeking approval of all changes affecting voting by the United States District Court for the District of Columbia irrespective of whether the changes have been objected to previously by the Attorney General.

Sincerely,

/s/
J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

CITY OF ROME
GEORGIA

May 21, 1976

Robert M. Brinson
City Attorney

U. S. Attorney General
Department of Justice
Washington, D.C.

RE: City of Rome, Georgia

Dear Sir:

I am handing you herewith an application for reconsideration of the prior submissions of the City of Rome under Section 5 of the Voting Rights Act.

As I have discussed with Mr. McGrath, in view of the City's contention that the Act is void and not applicable to it, the Rome City Commission is compelled to proceed with its scheduled primaries and elections as required by State law, and is now doing so.

Respectfully submitted,

CITY OF ROME, GEORGIA

BY: /s/
ITS ATTORNEY

APPLICATION BY THE CITY OF ROME, GEORGIA, TO THE ATTORNEY GENERAL OF THE UNITED STATES FOR RECONSIDERATION OF HIS OBJECTION (UNDER SECTION 5 OF THE VOTING RIGHTS ACT, 42 U.S.C. 1973c) TO SUBMISSIONS BY SAID CITY OF ELECTION PROCEDURE CHANGES AND ANNEXATIONS

CITY OF ROME, GEORGIA

BY: /s/
ITS ATTORNEY



Now comes the City of Rome, Georgia (hereinafter referred to as "the City"), by and through its City Attorney and respectfully requests that the Attorney General of the United States reconsider his objection (hereinafter referred to as "the objection") to submissions (hereinafter referred to as "the submissions") by said City under Section 5 of the Voting Rights Act, which objection was dated October 20, 1975, and shows:

1.

The City has made submissions earlier, and makes this application, all without waiving but specifically reserving its contention that the Voting Rights Act of 1965 is void in that it violates the Constitution of the United States, on at least the following grounds:

(a) It fails to guarantee to the State of Georgia, the City of Rome and the citizens thereof, a republican form of government;

(b) It deprives the State of Georgia, the City of Rome and the citizens thereof of life, liberty and property without due process of law;

(c) It denies or abridges the right of the citizens of the City of Rome to vote on account of race and color.

2.

The City hereby incorporates and adopts the contents of all its previous submissions (except those pertaining to the 47 annexations not objected to; as noted in the objection, page 3) into this application for reconsideration.

3.

Within the City of Rome, the seats on the Rome City Commission and on the Rome Board of Education were at large long before November, 1964.

4.

The electoral changes and annexations described in the submissions did not have as their purpose, and do not have the effect, of denying or abridging the right to vote on account of race, color or otherwise.

5.

The City of Rome should not be affected by Section 5 of the Voting Rights Act for at least the following reasons:

(a) The Act is unconstitutional and void as hereinbefore set out;

(b) The City of Rome is not subject to the provisions of Section 5 in that no determinations specified in Section 4 have been made with reference to the City as a political subdivision;

(c) No "test or device" as defined in Section 4 of the Voting Rights Act has been used within the City of Rome for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or otherwise for at least 12 years prior to the filing of this application.



6.

The electoral changes and annexations should not be rejected under Section 5 for the reasons that:

(a) There is no history nor present existence of bloc-voting by race within the City of Rome, as evidenced by the affidavits attached hereto;

(b) Said changes and annexations did not cause, and will not lead to, a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise.

7.

The objection, and the requirements set forth therein, to-wit, the drawing of single member districts, are erroneous for at least the following reasons:

(a) The objection addresses itself to the procedures presently obtaining in the City and not only to the changes after November, 1964, as it is required to do;

(b) The objection makes a constitutional determination rather than one of statutory construction;

(c) The objection finds only the potential effect, and not purpose, of denying or abridging the right to vote, and such finding is insufficient to deny preclearance;

(d) The objection is not based upon a finding of retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise, as it is required to be;

(e) Any effect of abridgement would not be so substantial as to be preventable under any plan;

(f) The requirement of redistricting is unconstitutional in that it would constitute a racial gerrymandering contrary to the Equal Protection Clause;

(g) The requirement of redistricting would be counter-productive to the command of the Equal Protection Clause that racial lines be eliminated rather than created;

(h) Redistricting to assure the election of a racial proportion of representatives denies the citizens of Rome the constitutional right to be considered on their merits.

8.

The City of Rome respectfully requests that the Attorney General address itself and respond to each of the issues raised above, especially in light of the decision in Beer v. United States, 44 LW 4435, and that he find and interpose no objection to the submissions.

Respectfully submitted,

CITY OF ROME

BY: /s/
ITS ATTORNEY



AFFADAVIT IN RE: THE APPLICATION OF THE CITY OF ROME FOR RECONSIDERATION OF PREVIOUS SUBMISSIONS UNDER SECTION 5 OF THE VOTING RIGHTS ACT

GEORGIA, FLOYD COUNTY:

Personally appeared before the undersigned official duly authorized to administer oaths, T. DEAN JOHNSON, who after first being duly sworn, says on oath that the following facts are true:

That he is presently and has been for 11 years Chief Voter Registrar of Floyd County, Georgia, and has been involved in the election affairs of said County and the City of Rome for that period;

That, in said capacity, he has been keenly aware of elections and the election processes and trends in said City;

That, in said capacity, he has frequent occasions to consult and converse with members of both the black and the white race regarding City and election matters;

That, in his opinion as a long-time observer of City affairs and City elections and as a communicant with members of both races concerning election matters, the voters of the City of Rome vote according to their convictions, independent of race, and there is no history nor present existence of bloc-voting by race within the City of Rome.

/s/
T. DEAN JOHNSON

Sworn to and subscribed
before me this 21st day
of May, 1976.

/s/
NOTARY PUBLIC, FLOYD
COUNTY, GEORGIA

AFFADAVIT IN RE: THE APPLICATION OF THE CITY OF ROME FOR RECONSIDERATION OF PREVIOUS SUBMISSIONS UNDER SECTION 5 OF THE VOTING RIGHTS ACT

Georgia, Floyd County:

Personally appeared before the undersigned official duly authorized to administer oaths, HARRY JOHNSON, JR., who, after first being duly sworn, says on oath that the following facts are true:

That he is presently Probate Judge of Floyd County, Georgia and Municipal Election Superintendent of the City of Rome, Georgia, and has been involved in the elections of said County for 20 years and the elections of said City for 6 years;



That, in said capacity, he has been keenly aware of elections and the election processes and trends in said City;

That, in said capacity, he has frequent occasions to consult and converse with members of both the black and the white race regarding City and election matters;

That, in his opinion as a long-time official in local elections and as a communicant with members of both races concerning election matters, the voters of the City of Rome vote according to their convictions and according to the individual candidate, independent of race and there is no history nor present existence of bloc-voting by race within the City of Rome.

/s/
HARRY JOHNSON, JR.

Sworn to and subscribed
before me this 21st day
of May, 1976.

/s/
NOTARY PUBLIC

AFFADAVIT IN RE: THE APPLICATION OF THE CITY OF ROME FOR RECONSIDERATION OF PREVIOUS SUBMISSIONS UNDER SECTION 5 OF THE VOTING RIGHTS ACT

Georgia, Floyd County:

Personally appeared before the undersigned official duly authorized to administer oaths, H. F. HUNTER, JR., who, after first being duly sworn, says on oath that the following facts are true:

That he is a present Commissioner of the City of Rome, Georgia and has been involved in the government and affairs of said City for 7+ years;

That, prior to and in said capacity, he has been keenly aware of elections and the election processes and trends and has campaigned for election in said City;

That, in said capacity, he has frequent occasion to consult and converse with members of both the black and the white race regarding City and election matters;

That, in his opinion as a long-time observer of City affairs and City elections and as a communicant with members of both races concerning election matters, the voters of the City of Rome vote according to their convictions and the individual candidate independent of race and there is no history nor present existence of bloc-voting by race within the City of Rome.

/s/
H. F. HUNTER, JR.



Sworn to and subscribed
before me this 21st day
of May, 1976.

/s/
NOTARY PUBLIC

AFFIDAVIT IN RE: THE APPLICATION OF THE CITY OF ROME FOR RECONSIDERATION OF PREVIOUS SUBMISSIONS UNDER SECTION 5 OF THE VOTING RIGHTS ACT

GEORGIA, FLOYD COUNTY:

Personally appeared before the undersigned official duly authorized to administer oaths, Bruce Hamler, who, after first being duly sworn, says on oath that the following facts are true:

That he is presently City Manager of the City of Rome, Georgia, and has been involved in the government and affairs of said City for 36 years;

That, in said capacity, he has been keenly aware of elections and the election processes and trends in said City;

That, in said capacity, he has frequent occasions to consult and converse with members of both the black and the white race regarding City and election matters;

That, in his opinion as a long-time observer of City affairs and the City elections and as a communicant with members of both races concerning election matters, the voters of the City of Rome vote according to their convictions independent of race and there is no history nor present existence of bloc-voting by race within the City of Rome.

/s/
BRUCE HAMLER

Sworn to and subscribed
before me this 21st day
of May, 1976.

/s/
NOTARY PUBLIC, FLOYD
COUNTY, GEORGIA

May 25, 1976

Mr. Robert M. Brinson
City Attorney
P. O. Box Drawer K.
Rome, Georgia 30101

Dear Mr. Brinson:

This will acknowledge receipt on May 24, 1976, of your request that the Department reconsider the objections that have been pre-



viously interposed under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, to 13 municipal annexations and to the imposition of a majority vote requirement, numbered posts, and staggered terms in commissioner and school board elections as well as the imposition of a residency requirement in board of education elections.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

BY:

DAVID H. HUNTER
Attorney, Voting
Section

CITY OF ROME
GEORGIA

ROBERT M. BRINSON
CITY ATTORNEY

July 13, 1976

Mr. J. Stanley Pottinger
Mr. Fred McGrath
Department of Justice
Washington, D.C. 20530

RE: City of Rome, Georgia

Gentlemen:

I am enclosing herewith two additional affidavits in re the application of the City of Rome for reconsideration of previous submissions under Section V of the Voting Rights Act. I am hereby requesting that these affidavits be included as exhibits to our now pending application for reconsideration and considered in your determination.

Thank you very much.

Yours very truly,

/s/
Robert M. Brinson

bbo
Enclosures
cc: Mr. Bruce Hamler

AFFIDAVIT IN RE: THE APPLICATION OF THE CITY OF ROME FOR RECONSIDERATION OF PREVIOUS SUBMISSIONS UNDER SECTION 5 OF THE VOTING RIGHTS ACT

GEORGIA, FLOYD COUNTY:



Personally appeared before the undersigned official duly authorized to administer oaths, Sara T. Hixon, who, after first being duly sworn, says on oath that the following facts are true:

That she has been involved in community affairs and elections for 40 years and has voted in City elections for 40 years.

That, in her opinion as a long-time voter and observer of City affairs and City elections, the black voters of the City of Rome vote according to their convictions, independent of race and there is no history nor present existence of bloc-voting by race within the City of Rome.

/s/
Sara T. Hixon

Sworn to and subscribed
before me this 7th day
of July, 1976.

/s/
NOTARY PUBLIC, FLOYD COUNTY, GEORGIA My Commission Expires October 25, 1978

AFFIDAVIT IN RE: THE APPLICATION OF THE CITY OF ROME FOR RECONSIDERATION OF PREVIOUS SUBMISSIONS UNDER SECTION 5 OF THE VOTING RIGHTS ACT

GEORGIA, FLOYD COUNTY:

Personally appeared before the undersigned official duly authorized to administer oaths, David Braziel Jr. who, after first being duly sworn, says on oath that the following facts are true:

That he is a member of the black race and a citizen of the City of Rome, Georgia;

That he has been involved in community affairs and elections for 12 years and has voted in City elections for 12 years.

That, in his opinion as a long-time voter and observer of City affairs and City elections, the black voters of the City of Rome vote according to their convictions, independent of race and there is no history nor present existence of bloc-voting by race within the City of Rome.

/s/
David Braziel, Jr.



Sworn to the subscribed
before me this 6th day
of July, 1976.

/s/
NOTARY PUBLIC, FLOYD COUNTY, GEORGIA My Commission Expires October 25, 1978

DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20530

August 12, 1976

Mr. Robert M. Brinson
City Attorney
City of Rome
P. O. Drawer N
Rome, Georgia 30161

Dear Mr. Brinson:

This is in reference to your request that the Attorney General reconsider the October 20, 1975, decision not to withdraw the objection under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, to 13 of the 60 annexations originally submitted June 2, 1975, and the objection of October 20, 1975, to changes in the manner in which individuals are elected to the City Commission and the Board of Education. Your request for reconsideration was received on May 24, 1976, and further information sup-

plementing the request was received on July 14, 1976.

After careful analysis of the request for reconsideration, including consideration of the affidavits submitted and the recent Supreme Court decision in Beer v. United States, ____ U.S. ____, 49 U.S.L.W. 4435 (March 30, 1976), we do not perceive a basis for the Attorney General to withdraw his objection to the changes in the manner in which individuals are elected to the City Commission and the Board of Education. While we have taken full note of the statements you submitted to the effect that racial bloc-voting does not exist in the City of Rome, representations made to us by members of the black community in Rome are to the contrary and this is supported to some extent by the limited information we previously had with regard to the 1970 primary election results (see my letter of October 20, 1975). Accordingly, the Attorney General will decline to withdraw the objection to the imposition of the majority vote requirement, numbered posts, and staggered terms in City Commission and Board of Education elections and the residency requirement in Board of Education elections.

With respect to the objection to the 13 annexations, we are mindful of the suggestion in my October 20, 1975, letter that the Attorney General would reconsider his determination should the city, inter alia, undertake again to elect its councilmen and Board of Education members by a simple plurality - win system which does not incorporate the limiting features objected to therein. Since the continued objection to those features renders the majority vote requirement, numbered posts and residency



requirement for Board of Education elections legally unenforceable the necessary effect of that objection is a reversion to the previously existing simple plurality - win system. In view of that circumstance, therefore, the Attorney General withdraws his objection to the 13 annexations insofar as Board of Education elections are concerned.

We cannot, however, reach a similar conclusion relative to City Commission elections. The pre-existing residency requirement for commission elections (which the Attorney General's objection does not reach because it did not constitute a change) prevents that electoral system from being a simple plurality - win system. Consequently, in view of the limiting residency feature in the context of at-large voting and indications that racial bloc-voting exists, the Attorney General is unable to withdraw his objection to the 13 annexations insofar as City Commission elections are concerned.

I note in your letter of May 21, 1976, the statement that the City is compelled to proceed with its scheduled primaries and elections. It is my understanding, however, that no one has qualified for either the Rome City Commission or the Rome School Board and that the scheduled August elections for these two bodies have been postponed. Accordingly, would you please advise me as soon as possible whether this understanding is correct and, if not, what steps you intend to take with respect to any primaries or elections in the City of Rome.

Sincerely,

/s/
J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

**********

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
(TITLE OMITTED)

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION OF PLAINTIFF CITY OF ROME AND ITS OFFICIALS FOR PARTIAL SUMMARY JUDGMENT

Filed May 8, 1978

> As the Attorney General pointed out during hearings on the Act...., an area need do no more than submit affidavits from voting officials, asserting that they have not been guilty of racial discrimination through the use of tests and devices during the past [seventeen] years, and then to refute whatever evidence to the contrary may be adduced by the Federal Government.



This Court discussed this standard in Virginia v. United States, 386 F. Supp. 1319 (D.D.C. 1974), aff'd per curiam, 420 U.S. 901 (1975), and found that an "exhaustive canvass of registrars...plus a good faith attempt to solicit information from black leaders" met "the affidavit requirement" of Katzenbach 386 F. Supp. at 1321.

The City of Rome has conducted such an exhaustive canvass, the view of ten black leaders are set forth in the record and summarized below, and no "evidence to the contrary" has been adduced by the United States. The evidence in support of Count II was developed through ten depositions taken by the Defendants and the eighteen affidavits of all of the City officials who have been charged with responsibility for voter registration and the conduct of elections for the past forty years. The United States has admitted in response to Plaintiffs' discovery requests that it has no contrary evidence.

Mr. Elgin Carmichael, a black registered voter, testified that he registered 30 years ago at the age of 21. Carmichael Deposition at page 21. Mr. Donald Jackson, who is chairman of the local Voter Education Project Committee, and who also served on the Democratic Executive Committee and the City Traffic Committee, testified that he registered to vote in 1960, when he came to the City of Rome, and encountered no difficulty. Jackson Deposition at page 10. Mr. Edwin Tanner, another black voter, testified that it was close to 30 years ago that he registered and that he did not encounter any difficulties at that time. Tanner

Deposition at pages 12-13. Mr. C. W. Aycock, who serves as Director of Student Financial Aid of Berry College, testified that he probably registered when he was 21 years of age, which would have been in 1930. Aycock Deposition at page 7. He further testified that black citizens of the City of Rome have had no problems with registering for at least the past 20 years, that registration has been actively sought and encouraged for the last 15 years by blacks and whites, and that generally there has been no problem with voting by black citizens. Id. at page 45.

Mr. James Wright, a representative of the Voter Registration Project, testified that he registered to vote at the age of 18, in 1950. Wright Deposition at page 22. He testified that blacks have never had a problem with registration in the City of Rome and that the Voter Registration Project has registered about 4,000 black voters, a record number. He further indicated that the Voter Registration Project has conducted successful registration drives in the City of Rome. Id. at pages 7, 23, and 29, and 49.

Mr. John W. Houser, another black voter, testified that he doesn't remember exactly when he first registered to vote, but "it has been so long I really don't recall details." Houser Deposition at page 8. Mr. E. J. Thoma s testified that he registered in 1967 toward the end of his high school year at the age of 18. His registration took place through a program in which registrars came to the schools to register students. Thomas Deposition at pages 16-17. Mr. Curtis Moreland testified that blacks have never had any trouble registering



to vote and that registration has been encouraged by the city officials. Moreland Deposition at pages 48-49. Mr. Napolean Fielder, himself a voter registrar and a black, indicated that no one has ever hindered his efforts, as a registrar, to get blacks registered. Fielder Deposition at page 41. Finally, Mr. Joe Wright testified that blacks have never been hindered in any way from registering and never encountered any obstacles to registering or voting. Wright Deposition at pages 42-43, 48.

Mrs. Ray Beard, who served as city registrar (Secretary of the City Commission) until the City of Rome transferred the responsibility for the registration of voters, swore in her affidavits that neither she, nor her staff, has ever required any person to take a test or an oath before registering. She affirmatively indicated in one of her affidavits that she and her staff have registered persons, black and white, who could not write. Affidavits in Support of Plaintiffs' Motion for Summary Judgment of Mrs. Ray Beard. Mrs. Helen Dowdy, who worked under the supervision of Mrs. Beard, testified that neither she nor any other employee of the office of the Secretary of the Commission ever required any person to take a test before registering. She and other employees have registered persons, black and white, who could not write. Affidavit in Support of Plaintiffs' Motion for Summary Judgment of Mrs. Helen Dowdy.

Plaintiff, Bruce Hamler, Rome City Manager, testified that over the years citizens who could not write have been allowed to register by making a mark. Hamler Deposition at page 18. He further stated that citizens who

could not read were nevertheless allowed to vote. Id. at pages 128-130. Corroborative of this point, Mr. Moreland stated that when he registered, approximately in the early 1960's, he did not have to prove that he could read or write. Moreland Deposition at page 54. Mr. Fielder also indicated that he does not remember having to take any test to register. He just went in and signed his name. Fielder Deposition at pages 69-71. Mr. Tanner stated that when he first registered "close to 30 years ago", he believed that a literacy test was imposed; however, he testified that in more recent times procedures are simplified and there is nothing that people have to read. Tanner Deposition at page 12.

The evidence offered by Plaintiffs, including the additional affidavits, could not be clearer. Mrs. Ray Beard's affidavits state directly that neither she nor her staff ever refused to register any person, black or white, except for the reason of non-residency. Affidavits in Support of Plaintiffs' Motion for Summary Judgment of Mrs. Ray Beard. Mrs. Dowdy's affidavit is to the same effect. Affidavit in Support of Plaintiffs' Motion for Summary Judgment of Mrs. Ray Beard. Mrs. Dowdy's affidavit is to the same effect. Affidavit in Support of Plaintiffs' Motion for Summary Judgment of Mrs. Helen Dowdy. Mr. Horace Clary, former City Attorney, stated in his deposition, quite directly, that no one has ever been denied the right to register for a city election. Clary Deposition at pages 34-36.

With respect to the indication of this court in Virginia v. United States, supra, that good faith attempts to solicit information from



black leaders is also necessary in order to meet the Katzenbach affidavit requirement, the depositions of Plaintiff H. F. Hunter, Jr., Mr. Leon Wade, Plaintiff Bruce Hamler, Mr. Horace Clary, and Mr. David Harvey, all of whom have been city officials, clearly indicate many instances in which successful efforts to solicit views of black leaders have been made. See, e.g., Wade Deposition at pages 22-25; Clary Deposition at pages 87-88; Harvey Deposition at pages 18-20. However, more startling in this regard is the testimony of black leaders themselves.

Mr. Fielder indicated that the current Commissioners do the best they can to represent the black community. Fielder Deposition at page 73. Mr. Houser indicated that the current Commission and Rome Board of Education are responsive to the community as a whole, black as well as white. Houser Deposition at pages 11-12. Mr. Carmichael stated that the Commissioners do not ignore the Rome black community, that they are interested and have good intentions. Carmichael Deposition at page 24.

It is interesting that each of the black leaders testified that four different members of the Commission were the "most responsive" to the needs of the black community. Mr. Moreland also indicated that he, as school principal, has enjoyed extreme responsiveness. For example, when there was a fire at the school several years ago, cooperation on the part of the City was "the ultimate." Moreland Deposition at pages 39-21.

The foregoing evidence satisfies the Katzenbach "affidavit requirement" as construed

by this Court in Virginia v. United States. The responses of the United States to the discovery requests of the City of Rome satisfy the second prong of the relevant test.

The Defendants have admitted that they have not made a finding with respect to, nor do they have any evidence of, barriers to black registration with respect to time and place of registration, registration personnel, purging, or re-registration; nor have they made a finding, nor do they have any evidence, of barriers to black voting, with respect to denying minorities the ballot, polling places, including location and adequacy, election officials, inadequate bilingual information and materials, problems of illiterate voters, or absentee voting; nor have they made a finding, nor do they have any evidence, of barriers to black candidacy with respect to filing fees, obstacles to qualifying, campaigning, access to voters at polling places, poll watchers, counting the vote, or problems of independent or third party candidates. Defendants' Responses to Plaintiffs' Second Interrogatories, Responses Nos. 12 and 13. Defendants have responded that no incident of harrassment, intimidation, or violence with respect to registration or voting in the City of Rome has been reported to the Office of the Attorney General. Defendants' Response to Plaintiffs' Second Request for Admission of Facts and Genuineness of Documents, Responses Nos. 3 and 4. Defendants have admitted that they have no evidence of lack of minority access to the process of slating candidates for the City Commission or Board of Education. Defendants' Responses to Plaintiffs' Third Interrogatories, Responses Nos. 4(a), 4(b) and 31.



Finally, Defendants have admitted that they do not even make a contention that any of the following exists in the City of Rome: barriers to black registration, with respect to time and place of registration, registration personnel, purging and re-registration; barriers to black voting with respect to denying minorities the ballot, polling places, including location and adequacy, election officials, and inadequate bilingual information and materials, problems of illiterate voters, and absentee voting; barriers to black candidacy, with respect to filing fees, obstacles to multi-racial and multi-ethnic policies, problems of independent and third party candidates, and minimizing the impact of minority success; and/or physical and economic subordination of black citizens. Id. at Response No. 32.

Indeed, unless the United States changes its position taken in the discovery responses filed thus far, it appears that no substantial dispute exists between Plaintiffs and Defendants as to the factual merits of Plaintiffs' claim to bailout. In such a case as this, the Attorney General is required by the terms of Section 4(a) itself to consent to the entry of the judgment of this Court allowing a jurisdiction to "bailout"; however, the United States has previously taken the position in this case the "[s]ince the entire State of Georgia is subject to the Act's special provisions,...only the state has authority to pursue...a bailout and an individual subjurisdiction of the state is not entitled to such relief." Memorandum in Support of Defendants' Motion to Dismiss at page 5. See also Hearing Before the United States District Court for the District of Columbia on October 28, 1977 at pages 19-20.

In Plaintiffs' First Request for Admission of Facts and Genuineness of Documents, Defendants were asked to admit that "enactment of laws is an integral and traditional function of state and local government." Defendants admitted this request. Defendants' Response to Plaintiffs' First Request for Admission of Facts and Genuineness of Documents, Response No. 42. Defendants were then asked to admit that the enactment of laws is an integral and traditional function of the City of Rome, Georgia. Similarly, Defendants admitted this request. Id. at Response No. 43. Defendants were then asked to admit that "the conduct of elections is an integral and traditional function of state and local government." Defendants admitted this request. Id. at Response No. 44. Finally, Defendants were asked to admit and did admit that the "conduct of elections is an integral and traditional function of the City of Rome, Georgia." Id. at Response No. 45. The Supreme Court has held this to be true as a matter of law:

> No function is more essential to the separate and independent existence of the States and their governments than the power to determine within the limits of the Constitution... the nature of their own machinery for filling local public offices. Oregon v. Mitchell, 400 U.S. 112, 125 (1970).

In the Affidavit in Support of Plaintiffs' Motion for Summary Judgment of Attorney John M. Nanos, a member of the firm that serves as co-counsel in the present case, Mr. Nanos, who is actively engaged in municipal



bond work, indicates that the existence of a threat of litigation that would bring into question the power of municipal officials to adopt ordinances providing for the issuance of bonds and to execute the bonds so authorized would result in a municipality's bonds either being unmarketable or being sold at an interest rate far in excess of that which the bonds will bear, if bonds counsel's opinion were not qualified in this respect. Thus, the threat of Section 5 litigation, such as Plaintiffs allege to have been made by the Department of Justice in the present case, directly impacts upon the "integral governmental functions" of raising revenue through the issuance of debt instruments and being thus able to carry on and expand municipal services. Indeed, it is well known that the ability to issue municipal debt is critical to the conduct of traditional and integral governmental functions.

Plaintiffs make no quarrel in any part of this motion with the other remedial portions of the Voting Rights Act of 1965 or its goal of realizing the rights guaranteed by the Fifteenth Amendment. Indeed, these are the rights which the citizens of the City of Rome, Georgia wish to exercise. However, the functions of Section 5 go far beyond any point that is necessary or even effective in realizing the goals of the Fifteenth Amendment.

The City of Rome is one of 512 (as of 1967) municipalities in Georgia. It is one of 1244 (as of 1972) local governments in Georgia. Second Supplement to Parties' First Stipulation of Facts, Exh. 46. The State of Texas is subject to Section 5. It has more than 4,000

political subdivisions. Second Request by Plaintiffs for Admission of Facts and Genuineness of Documents, Exhibit "B", at page 151. As of October 31, 1975, the following states were subject to Section 5: Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas and Virginia. In addition, the following have been separately designated: four counties in California, one county in Colorado, three towns in Connecticut, three counties in Florida, one county in Hawaii, one county in Idaho, 18 towns in Maine, nine towns in Massachusetts, ten towns in New Hampshire, three counties in New York, 40 counties in North Carolina and one county in Wyoming. Since the decision of Sheffield, supra, we know that all counties, towns and "minor, local governmental units" within each of the covered states are also covered.

Extrapolation from the above indicated computation obviously results in a very large number. This number must be multiplied by the submissions from each unit. The resulting product must be multiplied by the number of electoral changes, and the product is overwhelming, yet this is the present status of the administration of Section 5.

The Index of Section 5 Submissions as of 2/28/78 By Location and Date, filed by Defendants as Attachment A to Defendants' Response to Plaintiffs' Third Interrogatories, is a 1 1/4-inch (by actual measurement) thick sheaf of 356 computer print-out pages, with an average of 66 changes to the page.

As of March 31, 1978, there had been 21,438 changes submitted to the United States



Attorney General. Approximately 17,000 of those were submissions of only the last three years. Notwithstanding the mountain of paperwork and the gigantic bureaucratic machine engorging it, very little is being disgorged.

As of December 31, 1977, there were only 302 total objections. Upon the assumption that the total changes between December 31, 1977, and March 31, 1978 had not drastically changed, the objection rate is some 1.408%.

The State of Texas computed that one year's compliance with the Voting Rights Act "cost Texas' taxpayers at least $190,000 and required more than 35,000 manhours." Second Request by Plaintiffs for Admission of Facts and Genuineness of Documents, Exhibit "B". Other figures with respect to specific covered jurisdictions are both unavailable and beyond Plaintiffs' means of acquiring; however, in the continuing extrapolation, the total cost to the covered jurisdictions in time and money is staggering.

This constitutional overbreadth would not have been apparent to the Court in 1966, but is now demonstrable. The tests of constitutional latitude in the Tenth Amendment context were suggested by Mr. Justice Rehnquist in National League of Cities. In overruling Maryland v. Wirtz, but sustaining Fry, it was noted that in the latter opinion the "means selected were carefully drafted so as not to interfere with the States' freedom beyond a very limited, specific period of time." 96 S.Ct. at 2474-2475. In the face of the statistics which have been stipulated by Defendants in the present case, it cannot possibly be said that the means selected allegedly to enforce the rights guaranteed by

the Fifteenth Amendment were carefully drafted so as not to interfere with the States' freedom to conduct its elections and enact its laws.[10] The Attorney General's own statistics suggest the absurdity of the Section 5 remedy. The Attorney General has only determined that he "cannot make up his mind" in a very few instances, and yet every municipality in every covered state is made to endure the expense and frustration of the Section 5 process.

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10 By indicating that states' rights deserve the same constitutional protection as individual rights protected by the First, Fifth, and Sixth Amendments, Mr. Justice Rehnquist would undoubtedly require strict judicial scrutiny of federal legislation which intrudes into the exercise of those rights. Such strict scrutiny is traditional in the areas of individual freedoms; and necessarily includes a determination of whether the federal purposes could be achieved as effectively by less drastic means. In the present context, such means could include letters, surveys, "follow-ups," reviews of states session laws, systematic notifications, FBI investigations, and even lawsuits, as, in fact, the Justice Department has precisely instituted. Hearings, infra at pages 170, 301-302. Plaintiffs have attempted to develop information concerning alternative means available to the Justice Department, but Defendants' objections to Plaintiffs' discovery in this area have been sustained by the Court.



Careful examination of the Administrative preclearance route under this "limited and specific" test of Usery-Fry provides another indication that Section 5 is unconstitutional. Submission to the Attorney General has proven to be contrary to the assertion that such provisions gives "covered State(s) a rapid method of rendering a new state election law enforceable." Allen V. State Board of Elections, 393 U.S. at 549. The purported time frame is sixty days, the period within which the Attorney General must act (both by the terms of Section 5 and the Attorney General's own regulations). "Catch 22's,"" however, abound: the sixty days does not begin until the Justice Department has received a "complete" submission, and "completeness" is wholly in the Depart ment's unreviewable discretion; the sixty days does not begin until the submission is received by the Department; the Department may wait until the sixtieth day to mail an objection, and if the objection falls on a holiday, the Department has until the next working day. Hearings on Extension of Voting Rights Act, 1975 (hereinafter referred to as "Hearings") at page 1523. A review of sample submissions in the print-out reveals that the full sixty day period and more, is frequently taken. Indeed, declination of a submission as inadequate (and the consequent suspension of the sixty-day limitation) is "frequent". Hearings at page 302. More important, there is evidence indicating that such declination may be used to gain time because of the sluggishness, or some other problem, of the bureaucracy. See Defendants' Response to Plaintiffs' First Interrogatories, Response No. 32, Attachment "B", inter-office memo. In short, the sixty day time frame is not realistic as shown by the record in the present case.

The review process of the Attorney General is especially worthy of examination in light of the Usery-Fry guidelines. There is no provision for a hearing; there are no written standards of review; there is a confidential file unavailable to submitting jurisdictions; there is no requirement of a finding of fact. There is no necessity of finding dilutive factors. Indeed, there is not even a necessity to reach conclusions that a change is discriminatory. As Justices White, Powell and Rehnquist observed in dissent in Georgia v. United States, 411 U.S. at 543-544: "And why should the state be forced to shoulder that burden where its proposed change is so colorless that the country's highest legal officer professes his inability to make up his mind as to its legality?" Given all this power, the Attorney General, nevertheless, is not subject to review of his actions. Morris v. Gresette, supra.

The alternative administrative route offered by Section 5 should be comprehensively reviewed by examination of both what it does not provide and what it does provide. It does not provide for:

1. A local office for making submissions and having conferences;

2. Standards to limit the action of the Attorney General and his large staff;

3. Administrative hearings (and adversary proceedings) on contested issues, including:

(a) Electoral changes vel non;
(b) Effect of electoral changes;
(c) Degree of effect (de minimis vel non);



(d) Purpose of electoral change; and
(e) Existence vel non of any of the dilutive factors (including bloc-voting);

4. Administrative findings of fact as to any of the foregoing;

5. A finding of discriminatory purpose and/or effect;

6. Judicial review of any of the foregoing administrative activities; or

7. A bailout procedure for a political unit within a covered state, regardless of culpability.

The administrative route offered by Section 5 does provide for:

1. A presumption of irregularity of local official action;

2. Administrative supremacy of the United States Attorney General;

3. Effectively, no expeditious and reliable alternative to a declaratory judgment action in the District of Columbia District Court;

4. Freezing of electoral processes and disenfranchisement in covered jurisdictions; and

5. Through its suggested remedies (i.e., single member districts), the real possibility of variance from the perfect one person-one vote goal, permanent compartmentalization

of the electorate, reinforcement of bloc-voting, and prevention of minority members' influence on the political system beyond the bounds of their single member districts. David vs. Garrison, 553 F.2d 923 (5th Cir. 1977).

Summarily, then, the "Star Chamber," non-reviewable nature of the supposed "rapid method" of preclearance makes submission to the Attorney General unacceptable and unrealistic.

One aspect of the Defendants' objections to the electoral changes in the City of Rome deserve special attention in the context of the Tenth Amendment. The Attorney General has found objectionable changes in the very structure of the City government. This is the type of interference with state activities that Mr. Chief Justice Burger implied to be objectionable in Milliken v. Bradley, 97 S. Ct. 2749 (1977). In approving certain remedies formulated by the court below to eliminate vestiges of Detroit's state imposed segregation, the Supreme Court was careful to note:

> The Tenth Amendment's reservation of nondelegated powers to the States is not implicated by a federal court judgment enforcing the express prohibitions of unlawful state conduct enacted by the Fourth Amendment... Nor are principles of federalism abrogated by the decree. The District Court has neither attempted to restructure local governmental entities nor to mandate a particular method of structure of state or local financing. Id. at 2762-2763. (Emphasis supplied.)



In the present case the Department of Justice is attempting to do exactly what Mr. Justice Burger clearly suggested to be a violation of the Tenth Amendment. The Department of Justice is attempting to restructure Rome's governmental entities and to mandate a particular method of local election, all in the absence of any finding of unconstitutionality with respect to the system that the City of Rome wishes to utilize. The City of Rome is thus penalized for having a different, but not unconstitutional, view than that of the Attorney General.

This record contains many feelings of ignominy, bewilderment and frustration shared by all the covered jurisdictions in their wrestling, not with the Voting Rights Act and its accomplishments, but with Section 5 thereof. Those feelings include: lack of incentive in the states "to get out from under the indignity" (Hearings at page 304); embarrassment because a state constitutional amendment had to be subjected to federal scrutiny and veto (Hearings at page 143); confusion about statewide election results (Hearings at page 143, 300-301); difficulty in dealing with the concept altogether (Hearings at page 349); concern about trouble and cost to some (but not all) the states (Hearings at page 589-590); and perhaps most profound of all, desperation at being disenfranchised (Hearings at pages 732-733).

Texas, which studied the effects of Section 5 when it came under its coverage in 1975, recognized still another counterproductive aspect:

> This "freezing effect", which some had feared in advance, is, in our opinion, the most disheartening

> aspect of the entire VRA controversy as, if it holds up, it may well mean that a law designed to protect voters has had the effect of denying them the opportunity to enjoy the effects of needed changes in local governmental systems and procedures. Second Request by Plaintiffs for Admission of Facts and Genuineness of Documents, Exhibit "B", page 174.

Perhaps the single most offensive attitude toward the covered jurisdictions in the record is revealed in the officially recognized instructions to those who would contact the Justice Department about their particular jurisdiction:

> If there is no hard evidence that it is discriminatory in some still undiscovered way, or even if you just have a hunch based on past experience that "they are up to something," this also should be explained to the Department. "Federal Review of Voting Changes" by David H. Hunter, Hearings at pages 1467, 1491.

The elected representatives of Rome, Georgia, were not "up to something" in 1966-1971, nor are they "up to something" now, except, as has been acknowledged by all the witnesses, to attempt to give the ultimate in representation to all their constituents.

Plaintiffs have admittedly mounted a broad-based attack upon Section 5. Our reference to the Tenth Amendment is actually a short-hand expression for a statement that Section 5 violates the entire federal structure of



the Constitution, and thus is void. "Congressional action which treats the states in a manner inconsistent with their constitutionally recognized independent status, therefore, should be void, not because it violates any specific constitutional provision or transgresses the explicit boundaries of any specific grant of authority, but because it would be contrary to the structural assumptions of the Constitution as a whole." L. Tribe, A Treatise on American Constitutional Law Section 5-20, at 301 (1978).

Admittedly, the adoption by this Court of a "new federalism" approach to Section 5 is a departure from South Carolina v. Katzenbach, supra, wherein the Court, although not addressing specifically the Tenth Amendment and concepts of federalism subsumed thereunder, did hold directly that the Voting Rights Act of 1965 was constitutional in all respects. Nevertheless, constitutional law has changed greatly since 1966, and the jurisdictions subject to the Voting Rights Act of 1965 have also changed. Many of the concerns of these jurisdictions are properly addressed only to the Congress, but this Court should deal with Section 5. Whatever justification it may have had in 1966 has been undermined and its overbreadth demonstrated by the ensuing years. In describing the nature of the judicial process, Mr. Justice Cardozo wrote of the process that has overtaken Katzenbach: "The bad will be rejected and cast off in the laboratory of the years. Little by little the old doctrine is undermined. Often the encroachments are so gradual that their significance is at first obscured. Finally we discover that the contour of the landscape has been changed, that the old maps must be cast aside, and the ground charted anew." B. Cardozo, The Nature of the

Judicial Process 142 (1921). This philosophy finds current articulation in Mr. Justice Harlan's opinion in Oregon, wherein he expressed his belief that the congressional attempt to lower the voting age by legislation was constitutional, stating, "I am satisfied that I am free to decide (this) case unshackled by a line of decisions which I had felt... entailed a basic departure from sound constitutional principle." 400 U.S. at 219.

C. Section 5 Of The Voting Rights Act, To The Extent That It Does Not Require A Showing Of Racially Discriminatory Purpose, Is Violative Of The Fifteenth Amendment Of The United States Constitution.

In paragraph 68 of the First Amended Complaint, Plaintiffs allege that Section 5 is null and void in that it violates the Fifteenth Amendment, to the extent that it requires a showing only of disproportionate racial effects, but not a showing of racially discriminatory purpose. This is a matter that has recently received detailed consideration by the Court of Appeals of the Fifth Circuit, but prior to the examination of this and other relevant case law, it must be noted that the record in the present case presents a series of annexations and political changes that were racially neutral in their purpose.

The Chairman of the Rome City Commission testified that there has never been any discussion of race in any annexation since he has been on the Commission. Hunter Deposition at page 46. Specifically, he testified that the Old Airport Community, the annexation first submitted to the Attorney General, was an



unincorporated island having sewerage problems located within the City. The Rome delegation to the Georgia General Assembly annexed it over the City's objections. Thus, there were clearly no racial motivations involved. Id. at pages 49-51. The other members of the Commission similarly testified that the Old Airport Community annexation as well as other annexations were made at the request of developers and homeowners in order to bring city services to them.

Defendants have admitted with respect to seven annexations that they would not have had a dilutive effect on minority voting power, if considered at the time of the annexation. Defendants' Response to Plaintiffs' Third Interrogatories, Response No. 6b. Presumably, Defendants made this admission since no voters resided in any of these annexed areas at the time of annexation.

In response to Plaintiffs' First Request for Admission of Facts and Genuineness of Documents, the Defendants answered that they were "without knowledge or information sufficient to determine whether the electoral changes" described in the First Amended Complaint " had as their purpose the denial or abridgment of the right to vote on account of race or color... ." Id. at Response No. 23. Similarly, Defendants indicated that they were "without knowledge or information sufficient to determine" whether the thirteen annexations to which the Attorney General continues to object were annexed "with a discriminatory purpose." Id. at Response No. 24. After Plaintiffs moved to have these requests deemed admitted, and this Court ordered the filing of an amended response, the Defendants stated that they had

"made reasonable inquiry into the electoral changes" described in Plaintiffs' First Amended Complaint "but have been unable to obtain information sufficient to enable Defendants to admit or deny that those changes had as their purpose the denial or abridgement of the right to vote on account of race or color." Defendants' Amended Response to Plaintiffs' First Request For Admission of Facts and Genuineness of Documents, Response No. 23. Similarly, Defendants indicated that they made reasonable inquiry into whether the remaining thirteen annexations were annexed with a discriminatory purpose, but "despite this inquiry, defendants have been unable to obtain information sufficient to enable them to admit or deny that those annexations had as their purpose the denial or abridgement of the right to vote on account of race or color." Id. at Response No. 24. It seems a fair inference from these responses that the Attorney General made no findings whatsoever with respect to the purpose of the Rome actions. In the first response, he indicated that he was without knowledge or information sufficient to form a belief as to the existence of purpose. Such absence of knowledge or information necessarily implies that he has made no finding. In his amended response, the Attorney General indicated that he made "reasonable inquiry" and was still unable to admit or deny that a prohibited racially discriminatory purpose existed. Thus, at the very least, these are admissions that no finding as to a discriminatory purpose has been made.

In response to Interrogatory No. 2 of Plaintiffs' Third Interrogatories. the Defendants emphatically state their lack of evidence as to purpose.



> Defendants have never contended that "the electoral changes and annexations generally described in Paragraphs 21 and 34 of Plaintiff's First Amended Complaint had as their purpose causing or leading to a retrogression of racial minorities with respect to their effective exercise of the electoral franchise in Rome, Georgia." Defendants do contend, however, that Plaintiffs must prove that such discriminatory purpose did not exist when the electoral changes and annexations were enacted, and, based upon the record as developed thus far in this case, it is our view that plaintiffs have failed to sustain their burden of proving the absence of a discriminatory purpose. Defendants' Response to Plaintiffs' Third Interrogatories at page 2.

Defendants have also admitted that they have no evidence of "lack of minority access to the process of slating candidates for the Rome City Commission" or "lack of minority access to the process of slating candidates for the Rome Board of Education." Defendants' Response to Plaintiffs' Third Interrogatories at page 4.

Finally, and most significantly, the constitutional issue has been sharply drawn in this case by Plaintiffs' Third Interrogatories No. 13, in which Defendants were asked:

> Please state, with respect to the electoral changes and annexations, whether Defendants:

(a) content that they were discriminatory in purpose; or

(b) contend that they were discriminatory in effect; or

(c) cannot determine whether they were discriminatory in purpose or not; or

(d) cannot determine whether or not they were discriminatory in effect or not.

Defendants responded directly and unequivocably to these requests in Defendants Response to Plaintiffs' Third Interrogatories. Defendants answered Interrogatory No. 13(a): "No." Defendants answered Interrogatory No. 13(b): "Yes." Thus, the issue of electoral changes and annexations as to which the Attorney General does not contend that there was a discriminatory purpose, but does contend that there was a discriminatory effect, is directly presented. As to the annexations, this position was presented very early in this matter in the letter of Assistant Attorney General J. Stanley Pottinger dated October 20, 1975 in which he indicated: "We cannot conclude that the thirteen annexations in question do not have a racially dilutive effect on voting in Rome." Obviously, the Attorney General made no finding with respect to "purpose".

The statute itself requires a showing of both purpose and effect. A "qualification, pre-requisite, standard, practice, or procedure" that a state wishes to adopt must be submitted to this Court and it must find that it "does not have the purpose and will not have the effect



of denying or abridging the right to vote on account of race or color... ." (Emphasis supplied.) The standard applied by the Attorney General in his disposition of his Section 5 responsibilities is said in his regulations to adopt a conjunctive, rather than an alternative, test. See 28 C.F.R. Section 51.4. In any event, the "Attorney General is obliged to adjudicate Section 5 submissions in the same manner the Court adjudicates declaratory judgment actions". Harper v. Levi, 520 F.2d 53, 69 (D.C. Cir. 1975), rev'd on other grounds, in Morris v. Gressette, 97 S. Ct. 2411 (1977). Notwithstanding the clear use of the conjunctive "and" in Section 5 of the Act, as opposed to the alternative "or" in Section 4 of the Act dealing with bailout, the Defendants have interposed objections to the City of Rome's electoral changes and annexations where they admittedly made only a finding, which Plaintiffs strenuously question, of discriminatory "effect." To the extent that the Defendants are correct with respect to the meaning of "and" in Section 5, the section is unconstitutional because the Fifteenth Amendment requires a showing of discriminatory "purpose".

Plaintiffs do not dispute that each of the electoral changes and annexations sought to be precleared constitute a "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting" within the meaning of Section 5, under the Supreme Court decisions interpreting that provision. The "at-large" provision which has existed in Rome, Georgia at least since 1918, the reduction in number of wards from nine to three to which the U.S. Attorney General did not object upon submission to him, and the forty-seven annexations to which the U.S. Attorney General has withdrawn his objection are not subject to chal-

lenge before this Court. Consequently, the issue here is limited to the validity under Section 5 of the electoral changes and annexations described above.[11] Plaintiffs contend that their electoral changes and annexations satisfy the requirements of Section 5 for the reason that they do not lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise. Beer v. United States, 425 U.S. 130, 141 (1976).

A. The Electoral Changes And Annexations Were Not Enacted With A "Purpose To Discriminate" And Should Be Precleared By This Court.

Plaintiffs satisfy the requirements of Section 5 by showing a lack of "purpose to discriminate." To the extent that Section 5, on its face, may be deemed to require anything more, it violates the Fifteenth Amendment upon which it is based. To the extent that Section 5 may be applied in such a way as to require anything more, such application is unconstitutional as a violation of the Fifteenth Amendment, as previously set forth in this memorandum.

The elected representatives of Rome citizens have sworn in this record that there existed no racial motivation in the passage of the legislation effecting the electoral changes and thirteen annexations which have heretofore

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[11] Plaintiffs respectfully refer the Court to the Memorandum of Points and Authorities in Support of Private Plaintiffs' Motion for Partial Summary Judgment at pages 2-8 for discussion of the factual background of these changes in addition to that presented.



been objected to by the United States Attorney General and which are now the subject of preclearance by this court.

The electoral changes in the City charter and four of the annexations objected to were, at the request of the Rome City Commission, effected by state legislation initiated by local state representatives. Those representatives have denied any racial motivation whatsoever in the exercise of their legislative powers. Affidavits in Support of Plaintiffs' Motion for Summary Judgment of J. Battle Hall and Jerry L. Minge.

The City Commissioners, who effected the other nine annexations (since November, 1964) objected to, have denied any racial motivation whatsoever, in the exercise of their legislative powers. Affidavits in Support of Plaintiffs' Motion for Summary Judgment of Grover C. Byars, Tom C. Caldwell, S. L. Hancock, David D. Harvey, Herman M. Holcombe, Ralph M. Howse, H. F. Hunter, Jr., Ben Lucas, Tom McEver, Lucien K. Oldham, R. L. Starnes, and John E. Yarbrough; Hamler Deposition at pages 28, 116, 120; Hunter Deposition at pages 45-51; Harvey Deposition at pages 40-43, 45-46.

Voting dilution claims founded on the Fourteenth Amendment require a showing of intentional discrimination. Washington v. Davis, 426 U.S. 229 (1976). The same showing is required in Fifteenth Amendment dilution claims. Nevett v. Sides, supra.

The record in this case shows that the electoral changes were all implemented as the state law required, by state representatives upon the petition of city officials. These changes

were deemed necessary generally to modernize the city ward configuration and election laws, as indicated by a letter dated July 6, 1965, from the Rome City Attorney recommending such changes. In addition to the necessity of redrawing the wards, staggered terms were deemed desirable, because of first-hand observation and experience with the lack of continuity in government. The majority vote requirement was instituted simply to track the unofficial guide to the conduct of city elections, the Georgia Election Code, which had just been passed in 1964 by the General Assembly of Georgia. The evidence of the purpose of these changes is contemporaneous with the time of their recommendation, logical and non-conclusory. The record does not disclose any alternative options for the objectives desired by the city officials.

The City Attorney's letter does not contain even a hint of any racial consideration in the recommendation. Indeed, as the City Attorney pointed out, it would have been counterproductive to the incumbent commissioners' politics to have diluted the vote of any black persons, because a great majority of those black persons supported the incumbent city administration. Clary Deposition at pages 56-58, 69. Moreover, as shown, the record contains the sworn testimony of the then City Attorney, the then and present City Manager and the state representatives that there was not any racial motivation whatsoever in the enactment of those changes. Finally, Defendants in the present case do not contend that unlawful purpose existed. See Defendants' Response to Plaintiffs' Third Interrogatories, Response No. 13.



The four (objected to) annexations effected by local legislation in the state legislature are shown as numbers (1), (2), (3) and (53) on Exhibit 35 of the Second Supplement to Parties' First Stipulation of Facts. Number (1) had no population at the time of annexation; Number (2) had 144 whites and no blacks at the time of annexation; Number (3) had 78 whites and 3 blacks at the time of annexation. Plaintiffs' Response to Defendants' Interrogatories, Response No. 8, Exh. 4. More importantly, at the time of annexation, (1) had no registered voters; (2) had 31 registered voters; (3) had 8 registered voters. Clearly, any resulting impact on voting would be de minimis at most. Moreover, as shown, the representatives testified under oath that they did not have any racial motivation in effecting those annexations.

The "Old Airport Community" annexation (Number (53)) was, it has been seen, effected by the state legislature over the objection of the Rome City Commission. It contained 781 white persons and no black persons at the time of annexation, and it contains only 511 white persons and no black persons at the present time. It contained only 241 registered voters at the time of annexation and only 203 at present. Plaintiffs' Response to Defendants Interrogatories, Response No. 8, Exh. 4. Sworn testimony shows that there was no racial motivation behind that annexation, and the purpose of said annexation could not be more clearly stated: it was a health hazard with a profound need for sewer services which could only be provided by the county government. Hunter Deposition at pages 49-51.

The remaining (objected to) annexations were effected through local ordinance by

the Rome City Commission. They are numbers (9), (13), (16), (18), (20), (39), (40), (43), and (52) as shown on Exhibit 35 of the Second Supplement to Parties' First Stipulation of Facts. At the time of annexation, only one of them contained any population at all, to-wit: (13) Battey Hospital, which had 35 white residents, no black residents, and of those, only 8 were registered voters -- clearly, a de minimis effect. Plaintiffs' Response to Defendants' Interrogatories, Response No. 8, Exh. 4.

The general purpose of annexations can probably be the subject of judicial notice by this court; however, the record contains testimony by long-time city officials who are qualified to state the need for, and purpose of, annexations: city growth and development, the provision of services, and a broadening of the tax base. Hamler Deposition at pages 136-37, 164-65; Wade Deposition at pages 34-35. The purposes of the specific annexations objected to were consistent with those general purposes. Harvey Deposition at pages 40-46; Hunter Deposition at pages 45-51; Hamler Deposition at pages 164-65. In any event, as shown, the City Commissioners who effected the latter annexations have each sworn that the areas were annexed without any racial motivation whatsover. The City Manager confirms the truth of that position. Hamler Deposition at pages 28, 116, 120.

The purpose of the electoral changes and annexations is, thus, undisputed. It is also undisputed that the purpose of the electoral changes and annexations was not racial motivation. Plaintiffs submit that they have satisfied the burden imposed by Section 5.



In this case, the evidence is undisputed that the political processes of the City of Rome are equally accessible to blacks. Indeed, the evidence in the record indicates that bloc-voting by race does not exist in Rome, and this should, Plaintiffs submit, be dispositive of the issue. Based upon years of supervision and observation, the County Voter Registrar and the Probate Judge-Municipal Election Superintendent testified that there was no bloc-voting by race in Rome. Johnson Affidavit; Harry Johnson Affidavit. City Commissioners, the former City Attorney, and the City Manager testified similarly. Harvey Deposition at page 65; Hunter Deposition at pages 17-18, 75; Wade Deposition at pages 12-13, 39-40, 43; Clary Deposition at pages 59-60, 81-85; Hamler Deposition at pages 120-121, 159-161. Black witnesses were less positive and divided as to this issue: Compare Jackson Deposition at pages 53-55, 66-67, and Hill Deposition at pages 33-37 with Aycock Deposition at pages 19-20. Mr. Jackson testified that Mr. Aycock and Mrs. Martin would have white support in an election. Jackson Deposition at page 55. He himself has been asked by white citizens to run for office ( Jackson Deposition at pages 41-42), as has Mr. Carmichael (Carmichael Deposition at pages 31-32), and Mr. Aycock, Mrs. Watkins, Mrs. Chapman, and Mr. Fiedler (Fielder Deposition at pages 59-63).

There have existed during elections in Rome at least three different "lists" as to who would be the best representative of the black community. Jackson Deposition at pages 30-33, 49-53. The leader of the Voter Education Project and a former black candidate for City elective office both testified that blacks would vote for the better candidate regardless of his

color. Jackson Deposition at pages 53-54; Houser Deposition at pages 17-18. Indeed, the Voter Education Project leader agreed that the point was "blacks getting the representation that they want as opposed to blacks putting blacks in office." Jackson Deposition at page 67. All witnesses agreed that the city officials in Rome have been very responsive to the electorate, black and white alike, and named at least four different City Commissioners as the most responsive to the black community: Mr. Harvey (Jackson Deposition at pages 33-34, 42-43); Mr. Hunter (Moreland Deposition at page 22); Mr. Caldwell (James Wright Deposition at pages 39-40); and Mr. Wade (Joe Wright Deposition at pages 36-37). Black citizens get good results when they go to Mr. Hamler, the City Manager. Jackson Deposition at pages 32-33, 43-45, 65; Carmichael Deposition at pages 30, 39-40; Moreland Deposition[13] at page 22; Fielder Deposition at page 56.

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[13]The Government took the deposition of a James W. Loewen, who, as a reputed expert, testified that bloc-voting by race existed in Floyd County in the U.S. Senatorial race of 1968. (It is assumed that the Government will contend that this deposition is admissible, and that it is evidence of the general existence of bloc-voting by race in Rome). The admissibility of this testimony for any purpose will be challenged in Plaintiffs' Responsive Brief. Other witnesses also opined as to the existence vel non of such phenomenon. The principal difficulty in making such a determination is and has been the lack of many black-white election contests and of any such contests wherein different and sufficient election precints were utilized.



Notwithstanding this apparent lack of bloc-voting, Plaintiffs respectfully invite the Court to examine the evidence as categorized and captioned according to the various factors that have been deemed significant in Section 5 determinations.

## Population, Age and Registration Statistics by Race

The City of Rome, Georgia, is a city of 30,759 population, 76.6% white and 23.4% black. Total voting age population is 79.4% white, 20.6% black. Registered voters total 13,097: 10,982 white (83.9% of total voting age; 66% of white voting age); 2,026 black (15.5% of total voting age; 46.7% of black voting age) Parties' First Stipulation of Facts, paragraphs 2-3.

## Minority Access to Political Process

REGISTRATION FOR VOTING AND VOTING. There is no evidence that because of past discrimination, present black participation is less than effective. Indeed, the opposite is true. There has never, in the memories of all its citizens (ranging from ten (Thomas Deposition at pages 16-17) to forty-eight (Aycock Deposition at page 7) years, been any obstruction to, or limitation upon, registration for voting and voting in the City of Rome.

The black witnesses, deposed by the Government, so testified. Fielder Deposition at page 70; Joe Wright Deposition at pages 42-43, 48; Moreland Deposition at pages 48-49, 54; Aycock Deposition at pages 44-45; James Wright Deposition at pages 23, 29.

Mr. James Wright, a black leader, affirmatively stated, "Rome hasn't had that problem."[14] James Wright Deposition at page 23. Mr. Fiedler is a black voter registrar, and has never encountered any problems or hindrances. Fielder Deposition at page 41. Voter registration drives among blacks have been active, and registration has been encouraged and supported by city government. Jackson Deposition at pages 8-10; Moreland Deposition at pages 48-49; James Wright Deposition at pages 7, 49; Aycock Deposition at page 45; Clary Deposition at pages 34-36, 58-61; Wade Deposition at pages 42-43, 46. Indeed, it is undisputed that neither a literacy test nor an oath has never been used in Rome. Mrs. Beard Affidavit (2); Harry Johnson Affidavit; Mrs. Dowdy Affidavit; Plaintiffs' Response to Defendants' Interrogatories, Responses Nos. 1 and 2. Furthermore, the City Manager and Assistant City Manager have even accompanied black persons to see that they registered and allowed registration by those who could not write. Hamler Deposition at pages 18-21, 128-130; Beard Affidavit; Dowdy Affidavit. No one has ever been refused

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[14]Indeed, Dr. John Houser, a black witness deposed by the Government, not only stated that he knew of no voting problems, but also added: "If you are asking about racial problems, I don't remember any racial problems here." Dr. Houser Deposition at pages 13-14. Segregation of public facilities in historically unknown in Rome (Aycock Deposition at page 71), at least in the last 40 years. Hamler Deposition at pages 85-87, 165.



the right to register to vote. Hamler Deposition at pages 18-19.[15]

Just as in the case of voter registration, voting by blacks has been actively encouraged by all, white and black alike. Hamler Deposition at pages 18-19, 44-47, 52-55, 127-128; Jackson Deposition at pages 8-10; Aycock Deposition at pages 61-61.

POLITICAL INFLUENCE AND EFFECTIVENESS. Black citizens have, and exert, trememdous influence on candidates and elections. Clary Deposition at pages 58-61. White candidates have vigorously wooed the black voters. Clary Deposition at pages 58-61; Hamler Deposition at pages 44-47; Aycock Deposition at pages 39-41. Indeed, those incumbent City Commissioners whose depositions were taken testified that they spent more than 50% of their time seeking votes from blacks. Wade Deposition at pages 17-18; Harvey Deposition at pages 18-24; Hunter Deposition at pages 14-17, 27. Such campaigning consists, inter alia, of attending speaking engagements (Clary Deposition at pages 58-62; Harvey Deposition at pages 22-24; Hunter Deposition at pages 14-17; Jackson Deposition pages 58-59, 63-64; Moreland Deposition at pages 37-38; Wade Deposition at

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[15]Defendants have no evidence that the foregoing facts concerning registration are inaccurate or questionable. Defendants' Response to Plaintiffs' Second Requests for Admission of Facts and Genuineness of Documents, Responses Nos. 3, 4 & 12.

pages 17-18), transportation of black voters to the polls ( Hamler Deposition at pages 52-55; Hunter Deposition at page 60), consultation with black leaders ( Clary Deposition at page 62), and seeking to be named on the important recommendation "lists" circulated by different groups of black citizens during elections ( Jackson Deposition at pages 30-33, 49-52; James Wright Deposition at pages 31-33; Aycock Deposition at pages 21-22, 32-34; Wade Deposition at pages 12-13).

SLATING AND CANDIDACY. Although there is absolutely no evidence of lack of minority access to the process of slating candidates for the City Commission or the Board of Education ( Defendants' Response to Plaintiffs' Third Interrogatories, Responses No.s 4(a), 4(b), 32(c)), blacks, as viable candidates, have been scarce in Rome. None of the recognized leaders has ever run. Fielder Deposition at pages 59, 63; Jackson Deposition at page 37; Moreland Deposition at page 30. Prior to 1964, blacks ran for office unsuccessfully, including Dr. Houser, who did not receive a plurality. The leader of the Voter Education Project felt that Dr. Houser did not have black support against his white opponent. Jackson Deposition at pages 56-57. Since the electoral changes of 1966 and the following years, other blacks have run. None, except one, was recognized as a viable candidate: Mr. Stubbs was unknown ( Jackson Deposition at page 57); Mr. Tanner was not a leader ( Jackson Deposition at page 65). Although recognized black leaders have been asked to run by both whites and blacks ( Jackson Deposition at pages 41-42), they have not run: Mr. Aycock, Mr. Vaughn, Mrs. Eva Martin, Mrs. Martha Ware ( Jackson Deposition



at page 37); Mrs. Watkins, Mrs. Chapman, Mr. Fielder ( Fielder Deposition at pages 59, 63); Mr. Joe Wright, Mr. Coefield, Mr. Burrell, Mr. Moreland, Mr. Walker ( Moreland Deposition at page 30); Mr. Carmichael ( Carmichael Deposition at pages 31-32). The City Manager believes that blacks do not get elected because they have not chosen to run. Hamler Deposition at pages 49, 138-139.

RESPONSIVENESS OF REPRESENTATIVES. The black witnesses, deposed by Defendants, were unanimous in the view that city officials have been very responsive to the needs of black citizens. Moreland Deposition at pages 22, 38-41; Jackson Deposition at pages 25, 32-34, 42-45, 65; Houser Deposition at pages 11-15; Carmichael Deposition at pages 24, 30, 39-40; Fielder Deposition at page 56; James Wright Deposition at pages 39-40, 44, 46-47; Joe Wright Deposition at pages 29-31, 36-38. Indeed, Mr. Moreland calls the City's response "the ultimate." Moreland Deposition at page 40. Dr. Houser had heard no complaints about responsiveness. Houser Deposition at page 28.

CITY SERVICES. The City has gone to great lengths to provide city services and improvements in predominantly black areas. If there has been any discrimination in expenditure of public monies based upon the predominant race of the area, it has been in favor of the blacks. Hamler Deposition at page 57. Street improvements have been abundant. Almost every street in black areas has been repaved in the last ten years, and approximately 65% of the asphalt poured by the City in the last six years has been in black areas. Hamler Deposition at pages 57-66, 141-142, Exh. 1. Street lighting

in black areas has been equal to or better than in white areas. Hamler Deposition at pages 67-73, 142-43, Exh. 2. The money expended on parks and recreation areas in predominantly black neighborhoods has been two to three times that spent in white areas. Hamler Deposition at pages 76-81; Wade Deposition at pages 27-31; Hunter Deposition at pages 65, 79-80. Many housing projects and improvements, heavily utilized by blacks, have been completed. Hamler Deposition at pages 81-85, 144-45, Exh. 4; Hunter Deposition at pages 41-44. The City transit department, of which the ridership is 65-70% black, has been a continuous and serious drain on the City treasury, and, in spite of frequent consideration to discontinue it, it has been subsidized from year to year at tremendous expense. Hamler Deposition at pages 91-98, 157-157, Exh. 5, Wade Deposition at pages 22-26. There has been no complaint at all about lack of police protection in black neighborhoods. Hamler Deposition at page 150.

Although there has never been a request to annex subdivisions containing many black families (Clary Deposition at pages 88-90; Aycock Deposition at pages 21-22), because there just are not any, the City has assisted and provided services to areas not contiguous and, hence, not annexable. Hamler Deposition at pages 124-26; Hunter Deposition at page 53. See generally Harvey Deposition at pages 34-38.

PUBLIC EMPLOYMENT. The racial composition of the City's work force very closely approximates the population percentage. The percentage of black employees in the school system exceeds the percentage of population. Hamler Deposition at pages 98-115, Exh. 6 & 7;



Wade Deposition at pages 32-33; Hunter Deposition at pages 28-29; Clary Deposition at pages 65-66. A substantial portion of these jobs are skilled and supervisory, and there are several school principals and assistant principals. Hamler Deposition at pages 100-101, 112.

Plaintiffs respectfully submit that their right to preclearance of the electoral changes and annexations has been established under all recognized tests. Plaintiffs believe that they are entitled to the declaration of this Court to this effect.

(Remainder of Pleading Omitted in Printing)

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
(Title Omitted in Printing)

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PRIVATE PLAINTIFFS' MOTION
FOR PARTIAL SUMMARY JUDGMENT

May 8, 1978

## II. BACKGROUND OF ELECTORAL CHANGES AND ANNEXATIONS

The City of Rome has voted at large at least since 1918, when the present Charter was enacted. (Parties' First Stipulation of Facts, paragraph 4, Exh. 1). Beginning with a charter amendment in 1929, the City of Rome had nine wards. (Parties' First Stipulation of Facts, paragraph 12, Exh. 2). As territory was annexed it became a part of the ward, or wards, to which it was contiguous. (Clary Deposition at 27). Because of the not unusual

difference in growth patterns and rates in the various areas of town, the wards, as of 1965, varied widely in size and population. (Clary Deposition at 27). Indeed, the disparateness of the size of the wards was grotesque. (Hunter Deposition at 8; Hamler Deposition at 23; Clary Deposition at 28-29, 41; Stipulation, First Supplement, Exh. 36). Although the City voted at large, there existed a requirement that each commissioner reside in a particular ward (Parties' First Stipulation of Facts, paragraph 10, Exh. 1), and he was recognized as representing that ward (as well as the City as a whole). Each commissioner had the same voting power. It is customary that persons residing in a particular ward call their representative from that ward rather than the others. (Clary Deposition at 74-76).

In the wake of the one man-one vote decisions of the U. S. Supreme Court (Reynolds v. Sims, 377 U.S. 533, and progeny), in 1965 the local city attorney of Rome recommended (Clary Deposition, Exh. 1; Hamler Deposition, at 132-134) that the Commissioners cause to be redrawn the wards of the City to reflect more accurately the population distribution.[1] (Clary Deposition at 41 and Exh. 1). As it happened, the geography of Rome provided a ready and natural division: the three rivers (the Etowah,

[1] It will be remembered that voting principles began to undergo remarkable changes during that period. Baker v. Carr 369 U.S. 186; Reynolds v. Sims, 377 U.S. 533; Avery v. Midland County Texas, 390 U.S. 474.



the Oostanaula and the Coosa) which have their confluence at Rome divide three areas (Hamler Deposition at 26-27) each of which reasonably proximated each of the other two in population. (Clary Deposition at Exh. 1). There also existed a need and desire for stability in the Commission so that the concept of staggered terms was recommended.[2] (Clary Deposition at 45-47; Hamler Deposition at 24). The reduction of wards from nine to three combined with the desire to keep the nine-member commission, which had existed since 1929, naturally dictated the use of "seats" or numbered posts, which were also recommended (Clary Deposition at 51-54, Exh. 1). In 1964, the State of Georgia had enacted the Georgia Election Code, which established a majority-vote requirement for victory in elections. (Clary Deposition at 54-55). Although the Election Code did not apply to municipalities within the state, (Second Supplement to Parties' First Stipulation of Facts, Exh. 44), it had been an unofficial guide to the conduct of city elections and it was recognized that a majority vote requirement was

[2] Officials of Rome were (and are) acutely aware of the ineffectiveness of non-staggered terms, in that they had a ready comparison with the governing body of Floyd County, which historically has been swept out of office, leaving no carry-over experience whatsover. As a result, county government has been generally ineffective. See Hamler Deposition at 24; Hunter Deposition at 12-13; Harvey Deposition at 11-15.

needed ( Clary Deposition at 54-55). The at-large feature was not changed, as it was desired to retain total responsiveness and avoid "ward-heeling." ( Hunter Deposition at 69-70; Clary Deposition at 48-50; Exh. 1; Hamler Deposition at 161-162, 165-167.

In Georgia, municipalities have some "home-rule" powers; however changes in electoral processes, inter alia, are not a part thereof. Those are reserved to the Georgia Legislature (General Assembly). ( Second Supplement to Parties' First Stipulation of Facts, Exh. 38, 44). In the absence of a specific "home rule" power, the requirement for amending a city charter is to petition for the initiation of a proposed change by the delegation of state representatives and senator from the legislative district in which the city is located. ( Clary Deposition, Exh. 1). The General Assembly convenes annually in a forty-day session ( Second Supplement to Parties' First Stipulation of Facts, Exh. 40); local legislation may be introduced by a local legislative delegation only after an official "Notice of Intention to Introduce Local Legislation" describing the bill is properly advertised.[3] (Second Supplement to Parties' First Stipulation of Facts, Exh. 39, 40).

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[3]Moreover, the Georgia Constitution and statutory law require that whenever the term of an elected person is to be changed during such term such change must be approved by the people in a referendum on the question. (Second Supplement to Parties' First Stipulation of Facts, Exhibits 39, 41). Such a requirement in



The above procedure was followed, and the City of Rome amended its charter in 1966 and the_____years thereafter generally to provide for the recommended changes thought to be necessary and desirable. In the meantime, the Voting Rights Act of 1965 became effective. As many other covered jurisdictions,[4] the City of Rome did not, until requested by the U.S. Attorney General, submit the changes for preclearance. ( Parties' First Stipulation of Facts, paragraphs 26-32). Also, in the meantime, the state of Georgia passed and submitted similar changes generally applicable to all cities in the State,[5] and the U.S.

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(Footnote 3 continued)
the context of time, uncertainty and the interplay of federal and state laws, further complicates the legislative process and severely interferes with the city's ability to function effectively. See Plaintiffs' Memorandum, pp. 24-27, 29, 31, 34-36, 40.

[4]Section 5 "remained practically dormant for several years." Hearings on Extension of the Voting Rights Act of 1965 before the subcommittee on Civil and Constitutional Rights of the House Judiciary Committee, 94th Sess., ser. 1, Parts 1 and 2 (1975) (hereinafter referred to as "Hearings", p. 1480). It had barely begun to be implemented in 1969 and 1970 (Hearings, p. 169, 1480).

[5]Between the enactments of 1966 and 1967 and the submission of such enactments, specifically, in 1968, the Georgia Municipal Code (applying to all municipalities in Georgia, including

Attorney General precleared said changes ( Defendants' Responses to Plaintiffs' First Requests for Admission of Facts and Genuineness of Documents, Section 6).

In 1967, the City of Rome conducted an election for members of the Rome Board of Education, in accordance with the 1966 Charter amendments. ( Parties First Stipulation of Facts, Exh. 3-8, 26). In 1968, the City of Rome conducted an election for Rome City Commission in accordance with the 1966 and 1967 charter amendments (Parties' First Stipulation of Facts, Exh. 3-8, 26). In 1970, the City of Rome conducted elections for both Board of Education and City Commssion, in accordance with the 1966 and 1967 charter amendments ( Parties' First Stipulation of Facts, Exh. 3-9, 27, 28, 29). In 1972, the City of Rome conducted elections for both Board of Education and City Commission, in accordance with the 1966,

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(Footnote 5 continued)
the City of Rome) was submitted by the Attorney General of the State of Georgia to the Attorney General of the United States. (Parties' First Stipulation of Facts, Sections 6-8). Sections thereof which determined applicability (Section 34A-102), and which provided for a majority vote requirement (Section 34A-1407(a)), run-off elections (Section 34A-1407(b)), and the designation of posts (Section 34A-902) were not objected to. ( Parties' First Stipulation of Facts, Section 7; Second Supplement to Parties' First Stipulation of Facts, Response to Plaintiffs' First Request No. 6, Exhibit "A").



1967, 1970 and 1971 charter amendments. ( Parties' First Stipulation of Facts, Exh. 3-11, 30). In 1974, the City of Rome conducted elections for both Board of Education and City Commission in accordance with the 1966, 1967, 1970 and 1971 charter amendments. ( Parties' First Stipulation of Facts, Exh. 3-11, 31).

In 1971, the case of Perkins v. Matthews, 400 U.S. 379, was decided, and, in the same year, the Justice Department first issued regulations and guidelines on making submissions. Prior to that time Section 5 had remained practically dormant, and relatively few submissions had been made. ( Hearings, pp. 169-170). Indeed, states and cities had no guidelines until then. ( Hearings, p. 170).

In 1973, the General Assembly of the State of Georgia annexed into the City of Rome a certain area known as the "Old Airport Community," which area was an unincorporated island completely surrounded by the City but not receiving City services, including badly-needed sewer services. (Parties' First Stipulation of Facts, Exh. 23; Hunter Deposition at 49-51). The annexation was effected as a local law introduced into the General Assembly by the local Floyd County legislative delegation, without impetus from, or even approval of, the Rome City Commission. ( Hamler Deposition at 43-44; Harvey Deposition at 45-46.

The City of Rome, also since November, 1964, had annexed (by ordinance), or caused to be annexed (by petitioning the legislative delegation to initiate local legislation in the State General Assembly) some fifty-nine (59) other areas. (Parties' First Stipulation of

Facts, paragraphs 23-26, 29). These were effected as the area grew and developed in order to increase the tax base and provide services. (Hamler Deposition at 31-41, 136-137, 164-165; Wade Deposition at 34-35; Hunter Deposition at 45-49; Harvey Deposition at 40-45). Many of these annexations (and at least eleven of those to which objection still exists, ( Parties' First Stipulation of Facts, p.25) were effected prior to the Perkins decision and the promulgation of the Attorney General's regulations when it first became known that annexations had to be pre cleared. Defendants admit that each of the unpopulated areas annexed, if submitted and considered alone at the time of the annexation, would not be considered to have a dilutive effect on minority voting power. (Defendants' Response to Plaintiffs' Third Interrogatories No. 6). No area containing black residents was ever refused annexation. ( Hamler Deposition at 163-164).

The City Attorney submitted the "Old Airport Community" annexation to the Attorney General in 1974. ( Parties' First Stipulation of Facts, paragraph 26). It was at that time that a long series of communications and correspondence between the City Attorney and the Attorney General began, as can be seen in the record. ( Parties' First Stipulation of Facts, paragraphs 26-36; Second Supplement to Parties' First Stipulation of Facts, Exh. 45). Detailed information was required by the Attorney General, with respect to the electoral changes of 1966-1971, the Old Airport Community annexation and the other fifty-nine Rome annexations which had taken place since November, 1964, but had not been submitted.



The Attorney General, at first, requested additional information. He then objected to all sixty of the annexations. He then reviewed and objected to the imposition of a majority vote requirement, numbered posts and staggered terms in Commissioner and Board of Education elections and the imposition of residency requirement in Board of Education elections. The reduction in the number of wards from nine to three was not objected to. ( Parties' First Stipulation of Facts, Paragraph 30). Objections to forty-seven of the annexations, mostly commercial and industrial, were later withdrawn ( Parties' First Stipulation of Facts, paragraph 34), but objection was maintained as to thirteen annexations, most of which, with the exception of the Old Airport Community, had little or no population at the time of annexation. ( Aff., Hancock; Harvey Deposition at 40-45). The City of Rome moved for reconsideration and included evidence as to lack of racial bloc voting in Rome. ( Parties' First Stipulation of Facts, paragraph 35; Second Supplement to Parties First Stipulation of Facts, Exh. 45). Reconsideration was denied. ( Parties' First Stipulation of Facts, paragraph 36).

During the submission process, the election scheduled for 1976 approached, and pre-clearance not having been obtained, the election was not held. The City of Rome and Private Plaintiffs proceeded to Court. No local election has been held in Rome since 1974. ( Parties' First Stipulation of Facts, paragraph 42).[6]

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[6]Elections could not be held under the pre-November, 1964 law because the Attorney

## I. ARGUMENT

Private Plaintiffs, the citizens of Rome, black[7] and white, are nothing less than bewildered at any law which would have the articulated purpose, and the inevitable effect, of completely disenfranchising all the citizens, including those undeniably innocent of instituting any electoral changes--whether with discriminatory purpose, effect or whatever. Private Plaintiffs are not responsible for, nor do they have any realistic control over, any legislation, state or local, which changes electoral laws and ordinances in Rome. The closest

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(Footnote 6 continued)
General had not objected to the reduction of wards from nine to three and that (effective) provision was inextricably interwoven with the other (ineffective) electoral changes. (Parties' First Stipulation of Facts, Exh. 111). Moreover, the staggered terms and other new procedures had been fully implemented in the elections of 1968, and, there having already been two elections ( Response to Plaintiffs' Second Request No. 1) under the validly enacted ( Response to Plaintiffs' First Request for Admissions, No. 6-15) but unprecleared laws, the Board of Education and the City Commission consisted of members with varying terms.

[7]Napoleon Fielder, a local black leader, testified that political activity and interest in the black community was diminished because "we haven't had an election in a long time." (Fielder Deposition at 23, 45).



thing to "control" over such legislation available to Private Plaintiffs, it might be argued, would be ballot box control over the city commissioners who do have legislative powers; however, the ballot box is, paradoxically, denied them. In their bewilderment, Private Plaintiffs understandably label Section 5 counterproductive, to the say the least.

The "freezing effect" on the electoral process is particularly notable, as in Richmond and New Orleans, in the City of Rome as a result of the interplay of federal-state laws.[8]

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[8]The anomalous result of Section 5 probably cannot be better described and exemplified than in a March 2 1977, Washington Post article describing the City of Richmond's experience with the "unusual procedure":

> Virginia capital city elected its first City Council in seven years today...
>
> * * * * * * * * * * *
>
> The Richmond City Council apportionment plan grew out of a long entangled court fight, laced with racial divisiveness and ironies in which a black civil rights activist with a fragmentary following set out to fight city hall and won--after a fashion.
>
> But the cost of his battle was $763,559 in legal fees, a six-year disenfranchisement for both blacks and whites in Richmond, the freezing in power of a City Council he

As heretofore stipulated and shown, there has not been a local election in Rome since 1974. There cannot be one now. Private Plaintiffs have been unable to express their political beliefs, to associate to advance ideas,

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(Footnote 8 continued)

was trying to evict and the near atrophy of the Richmond Crusade for Voters, the most powerful black political organization in the State.

The citizens of Richmond and the Virginia State Senate had earlier pleaded with the Congressional Committee studying the proposed 1975 Extension of the Voting Rights Act to end their disenfranchisement. Hearings, pp. 732-733.

New Orleans had a similar experience:

"As a result [of the refusal to preclear a reapportionment plan] there have been no council-manic elections in New Orleans since 1970 and the councilmen elected at that time (or their appointed successors) have remained in office ever since." (Beer v. United States, 425 U.S. 130, 138 (1976)

There are no doubt many more, as this freezing effect was, indeed and surprisingly, the intent of Congress. (Beer v. United States, supra, at page 140).

The City of Rome now finds itself, as explained in n. 6 ante, in this strange and unrepublican "hold pattern."



to support candidates, to run for local office and to vote because their local government and political parties have been unable to provide them with the vehicle of an election by which to do so. Moreover, this expected periodic event, designed to bring at any time those in authority to the bar of public opinion,[9] has been denied even though the law of Private Plaintiffs' state mandates it.[10]

## SECTION 5, ON ITS FACE AND IN ITS APPLICATION, VIOLATES PRIVATE PLAINTIFFS' FIRST AMENDMENT RIGHTS

The Supreme Court has consistently, for decades, recognized the constitutional necessity of, and protected, the continuing

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[9] Wood v. Georgia, 370 U.S. 319, at 392:

"The purpose of the First Amendment includes the need...'to protect parties in the free publication of matter of public concern, to secure their right to a free discussion of public events and public measures, and to enable every citizen at any time to bring the government and any person in authority to the bar of public opinion by any just criticism upon their conduct in the exercise of the authority which the people have conferred upon them.'" See also Elrod v. Burns, 427 U.S. 347.

[10] See p. 15-16, 24 of Plaintiffs' Memorandum.

availability of the franchise for all citizens, and has never sanctioned its prolonged deferment or deprivation. Ex parte Siebold, 100 U.S. 371 (1880); Nixon v. Herndon, 273 U.S. 536 (1927); Lane v. Wilson, 307 U.S. 268 (1939); Baker v. Carr, 369 U.S. 186, 189 (1962); Gary v. Sanders, 372 U.S. 368 (1963); Wesberry v. Sanders, 376 U.S. 1 (1964); Reynolds v. Sims, 377 U.S. 533 (1964); Carrington v. Rash, 380 U.S. 89 (1965); Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966); Kramer v. Union School District, 395 U.S. 621 (1969); Cipriano v. City of Houma, 395 U.S. 701 (1969); Evans v. Cornman, 398 U.S. 419 (1970); City of Phoenix v. Kolodzieski, 399 U.S. 204 (1970); Bullock v. Carter, 405 U.S. 134 (1972); Dunn v. Blumstein, 405 U.S. 330 (1972). See also: Rosario v. Rockefeller, 410 U.S. 752 at pages 764-5 (dissent); CSC v. Letter Carriers, 413 U.S. 548, at pages 596-8 (dissent).

(REMAINDER OF PLEADING OMITTED IN PRINTING)

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THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

(TITLE OMITTED IN PRINTING)

RESPONSE OF PLAINTIFFS TO THE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Filed May 15, 1978



With respect to the present record, two matters asserted in the Brief for the United States require clarification. The first matter involves the requirements of the Georgia Code and actual voting practices in Rome. At one point it is stated: "However, in 1964, literacy tests were required by the Georgia State Code and the Code in effect in the City of Rome required that state law be followed in elections held in the City of Rome." Brief for the United States at page 29. "The record clearly reflects that state law as well as the Rome Code required the application of a literacy test as of November 1, 1964, and unless there is clear evidence to the contrary it must be assumed that the requirements of law were followed in the Rome area." Id. at page 41. Indeed, there is clear evidence to the contrary. The affidavits of the Secretary of the Rome City Commission, who served as the former voter registrar, and her assistant are unequivocal. The affidavit of Harry Johnson, municipal election superintendent, is likewise unequivocal. No literacy tests or other tests or devices to hinder registration were required in Rome. Similarly, the affidavits of all city officials charged with registration which have been submitted indicate that no tests were utilized. City of Rome Memorandum at pages 5-6, 59.

The Defendants have described the Plaintiffs' affidavits as "conclusory." As indicated in City of Rome Memorandum at pages 3-4, this Court has approved "undoubtedly self-serving affidavits" in Virginia v. United States, supra, at 1321. These affidavits are, in any event, not "conclusory" testimony but direct, uncontradicted, and sworn statements of fact that no such tests have been used for at least forty years in Rome.

The second matter requiring clarification involves the testimony of black citizens as to the use of any such tests. The Defendants make the following statements: "A number of the black persons who testified recalled taking a literacy test in either the county or the city." Brief of the United States at page 29. The cited authority for this assertion is the Edwin Tanner Deposition at pages 11-13 and the Fielder Deposition at pages 69-71. This is not the substance of either person's testimony. Mr. Napoleon Fielder stated: "I can't say that I had to take a test. I don't remember." Fielder Deposition at page 70. Mr. Fielder further testified that he successfully registered to vote by merely signing his name and giving his address. Id. Mr. Fielder concluded: "To my knowledge, there has never been any problem with registering, not in Rome -- not in Floyd County." Id. Mr. Fielder's comments with respect to tests seemed to be directed to the rest of the country, not Rome. Id. at page 69. Mr. Edwin Tanner testified that he first registered in Rome "close to thirty years" ago. Edwin Tanner Deposition at page 12. (The existence of separate registration for state and county elections and city elections caused some confusion in the memories of the witnesses. Id. at page 11; Fielder Deposition at page 71.) Mr. Tanner testified that he successfully registered at that time, and his recollection was clouded by the passage of this length of time. ("I don't know exactly, it's been some years." Edwin Tanner Deposition at page 11.) In any event, Mr. Tanner's testimony relates to a time period beyond the seventeen years required by the statute.

As to the relevant statutory period, the evidence in this record is uncontradicted as



to the use of any form of test or device. For this reason, presumably, Defendants have admitted that "the record does not directly reflect the extent to which the state-imposed literacy test denied black persons their right to vote... ." Brief for the United States at page 29. The record does not reflect this, because it did not happen.

To the extent that Defendants seek to taint the actual practices of the City of Rome with the provisions of the Georgia Code, their approach is directly contrary to that specified by the Supreme Court in Perkins v. Matthews, 400 U.S. 379 (1971). See City of Rome Memorandum at page 16. Plaintiffs also note that the Supreme Court in United Jewish Organizations of Williamsburgh, Inc. v. Carey, U.S. , 97 S. Ct. 996 (1977), carefully employed the word "used" in describing the literacy tests of King's, Brooklyn, and New York Counties in New York State. 97 S. Ct. at 1001, 1005. Defendants here simply ignore the word "used."

Defendants have directly admitted the lack of discriminatory purpose as to the annexations and have effectually admitted the lack of discriminatory purpose as to the political changes. Thus, the hypothesis of bloc-voting is essential to the Defendants' argument concerning the "effects" of the annexations and political changes. The hyperbole engaged in by the Defendants is, therefore, understandable. For example, Defendants assert that the record "demonstrates strong patterns of racial bloc-voting in Rome... ." Brief for the United States at page 3. This "strong pattern" is later elevated to an "inescapable conclusion." Id. at page 35.

This "inescapable conclusion" is founded on three items of evidence according to the Defendants. The first item includes the results of City elections in which black candidates have run. As to this item, the Defendants have condeded: "However, there are few City elections in which blacks have run, and, because of the limited data regarding the results of those elections, it is not possible for a statistician to analyze election returns and measure precisely the extent of racial bloc-voting." Id. at page 11. Thus, the Defendants acknowledge they must rely upon two other forms of evidence, the testimony of citizens in Rome who are knowledgeable about election practices and voting patterns, particularly in the black community, and the testimony of an alleged expert who described the results of one election in 1968.[6]

Plaintiffs acknowledged in their Memorandum that the witnesses took differing views as to the existence of bloc-voting by race. City of Rome Memorandum at page 57. The black citizens who served as witnesses were divided as to this issue. Compare Jackson Deposition at pages 53-55, 66-67, and Hill Deposition at pages 33-37, with Aycock Deposition at pages 19-20. According to Dr. Houser, blacks vote for the man running and not for the color of his skin. Houser Deposition at page 17. As Plaintiffs have set forth in their Memorandum, there have existed during elections in Rome at least three different "lists" circulated among the black community as to who

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[6] See pages 19-22, infra.



would serve as their best representatives. Jackson Deposition at pages 30-33, 49-53. See City of Rome Memorandum at pages 57-58. The County Voter Registrar and the Probate Judge-Municipal Election Superintendent testified that there was no bloc-voting by race in Rome. Johnson Affidavit; Harry Johnson Affidavit. The current City Commissioners, the former City Attorney, and the City Manager testified similarly. Harvey Deposition at page 65; Hunter Deposition at pages 17-18, 75; Wade Deposition at pages 12-13, 39-40, 43; Clary Deposition at pages 59-60, 81-85; Hamler Deposition at pages 120-121, 159-161. Plaintiffs will not repeat the points made in their Memorandum; however, in view of the significance of this issue in the context of the Defendants' argument, a number of additional aspects of the issue should be noted.

Some of the "evidence" put forward by the Defendants is puzzling. This is especially true in light of the clearly established recognition that mere failure at the polls is not evidence of a constitutional violation. Whitcomb v. Chavis, 403 U.S. 124, 153 (1971); United Jewish Organizations v. Carey, supra at 166. The fact that Mr. Samuel Stubbs lost in 1972 in his race for the Rome City Commission is said to have some significance. However, it is admitted that Mr. Stubbs, a Democrat, decided to run as a Republican. The Defendants attach no significance to this change of parties but seek to explain Mr. Stubbs' loss in racial terms. See Brief for the United States at page 15, n. 61. Furthermore, Mr. Stubbs was not and is not well known in the community. At least half of the black community did not know him; he was not a leader nor influential in the

black community. Jackson Deposition at pages 23, 57. Mr. Stubbs admitted that he had not been actively involved in politics before his campaign (Stubbs Deposition at page 17), and other testimony indicates that Stubbs did not do much campaigning at all. James Wright Deposition at page 17. Nevertheless, Plaintiff Hunter testified that he and his wife voted for Mr. Stubbs. Hunter Deposition at page 23.

Some of the "evidence" set forth by the Defendants is in direct contradiction of the record. Mr. Curtis Moreland, the black principal of Main Elementary, testified: "[W]hites will not vote for blacks. It's as simple as that... ." Brief for the United States at page 16. However, Mr. Moreland's comment has not been quoted fairly. It was apparently a general observation, and in the specific context of Rome politics, he admitted three pages later in his deposition that Reverend Clyde Hill received the support of white citizens. Moreland Deposition at page 13. Reverend Hill himself testified that he had the support of blacks and whites. He received invitations to speak at predominantly white civic clubs and churches. Hill Deposition at pages 17-18. He described his support from white citizens as "good" during his campaign. Id. at page 28. He also testified that he received political contributions from white citizens, and he identified the person who donated his political cards as being white. Id. at pages 36-37. See also James Wright Deposition at page 54. Mr. Harvey, a white and current member of the Rome City Commission, testified that he encouraged Hill to run and supported him. He gave Reverend Hill money and campaigned for him. Harvey Deposition at page 26. Mr. Harvey also testified that he



campaigned for Hill and caused some voters to support him. Id. at pages 30, 57. He testified that he personally voted for Mr. Hill and that a substantial number of his friends and family also voted for him. Id. at page 29. Plaintiff Hunter testified that Reverend Hill had the support of the majority of the City Commission. Mr. Hunter testified that he also voted for Reverend Hill and gave Reverend Hill some money. He testified that his wife voted for Reverend Hill and that he personally knew that at least two-thirds of the members of the City Commission voted for Reverend Hill. Hunter Deposition at pages 21-22.

The only "inescapable conclusion" that is presented by the record is that the current political leaders in Rome, who are white, supported the person designated by the Defendants as the most viable black candidate to have run in Rome. It is not unusual, as the record indicates, in the context of Rome politics, for an individual to run for office several times before he is elected. Wade Deposition at page 15. Mr. Wade, a current member of the City Commission, and white, ran four times before he was successfully elected. Id. at pages 6-7. Reverend Hill was not elected because he was not well known. Harvey Deposition at pages 26-27. Mr. Wade explained that Reverend Hill lost for the same reason that Wade lost his first couple of attempts at elective office, namely, lack of exposure. Wade Deposition at page 15. Apparently, Reverend Hill had been in Rome for about three years at the time of his campaign (Aycock Deposition at page 50), and Dr. John Houser described Reverend Hill as a "relative newcomer." Houser Deposition at page 21. Reverend Hill himself admitted that he was not

well known at the time of his campaign (Hill Deposition at page 19) and other testimony shows that he was then about 23 or 24 years old. Jackson Deposition at page 58. In fact, it was recognized that Reverend Hill did not actively seek votes from whites. Aycock Deposition at pages 15, 31-32, 61; Thomas Deposition at pages 21-23. Plaintiff Hamler testified that Reverend Hill did not receive active and substantial black support (Hamler Deposition at pages 120-121, 159-161); although he did have the support of a majority of the then City Commission. Hunter Deposition at pages 19, 21.

The other candidacies which have significance, according to the Defendants, are all actually indicative of the lack of bloc-voting by race in Rome. Mr. Whatley, according to the Defendants, ran for office sometime in the 1950's. There is no official record of his having run, and few people recall the details of his campaign. Brief for the United States at page 12 n. 33. "[H]is campaign failed to arouse much interest... ." Id. at page 12. Dr. Houser himself noted that politics was not necessarily his "bag at all." Id. The head of the Voter Education Project indicated that Dr. Houser did not have black or white support. Jackson Deposition at page 23. Jackson testified that Dr. Houser didn't make too much effort to be elected. Id. at page 57. However, as indicative of the lack of bloc-voting even in this context, Dr. Houser testified that some whites voted for him when he ran. Houser Deposition at page 17.

The candidacy of Mr. Edwin Tanner for Justice of the Peace receives attention from the Defendants. However, they failed to note



the significant testimony in this regard of the persons that they have described as "experts" with respect to political affairs to the Rome black community. He has been described as not being a qualified individual to run for public office, who lost for reasons other than the fact that he was black. Fielder Deposition at page 60; Carmichael Deposition at page 25. See also James Wright Deposition at page 16.

The Defendants give significant attention to the fears articulated by Mr. Elgin Carmichael, a black incumbent member of the Rome Board of Education, who was appointed to his position, to the effect that he could not be elected to the same position. Brief for the United States at page 16. Obviously, any testimony of this type is speculative, but this is not Mr. Carmichael's testimony. The quoted portion of his testimony in the Defendants' Brief is directly supportive of the Plaintiff's position. "I don't think I would have 100% of the black vote... . I think I would get a sizable amount of the white vote, but I don't think I would get enough white votes to give me enough to win, even though, as I say, I am very popular, and I have always tried to carry myself in a way that I was respected and I respect my people." Carmichael Deposition at pages 15-16. Mr. Carmichael himself indicates that he would not get all of the votes of black citizens and would receive substantial white votes.

The evidence with respect to bloc-voting in Rome is inconsistent with the government's position. It is totally consistent with a political atmosphere that was diverse, active, and undergoing change until stultified by the

Department of Justice.[7] It does not approach the racial cleavage in voting that is normally deemed to constitute bloc-voting. Note, United Jewish Organizations v. Carey And The Need To Recognize Aggregate Voting Rights, 87 Yale L.J. 571, 599 n. 148 (1978).

The final type of evidence of the existence of bloc-voting put forward by the Defendants is the "expert testimony of a political sociologist who has described the results of

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[7]The Defendants clearly do not understand the political dynamics of Rome, but rather have imposed pre-conceived, general concepts of racial polarization upon this concrete set of facts. For example, the Defendants assert: "It is an established fact that very few voters in Rome are Republican... ." Brief for the United States at page 15. However, it is also established that six of the nine current members of the City Commission are Republican. Commissioner David Harvey described how his minority group, Republicans, came to power. They sought to "be better organized, be more attractive, work harder, be more efficient in (their) use of...limited funds...and ...appeal to the community as a whole and not just the traditional Democratic office holders and political machine... ." Harvey Deposition at pages 17-18. A critical aspect of this effort was appeal to the black community. "I spent probably 50 percent of my total campaign time in the black community, although it only represents numerically at best 23 to 24 percent of the entire community I would say, and it was -- it was productive." Id at page 22.



one election, conducted in 1968, in which a black candidate opposed a white candidate and which, because a number of polling places were utilized, is of statistical significance." Brief for the United States at pages 12, 17-19, 25. In Plaintiffs' Memorandum it was noted that Plaintiffs would challenge the admissibility of such testimony for any purpose. City of Rome Memorandum at page 58 n. 13. Plaintiffs do so at this point and hereby object to the testimony and the opinions of Dr. Loewen as "guesswork and speculation." Polk v. Ford Motor Co., 529 F.2d 259, 271 (8th Cir.), cert. denied, U.S. , 96 S. Ct. 2229 (1976). For the testimony to be admissible, the matter must be closely related to the particular science examined and a matter of common knowledge, and the witness must have skill and knowledge so that his opinion rests on a substantial foundation and would tend to aid the establishment of the truth. Bridger v. Union Railway Company, 355 F.2d 382, (6th Cir. 1966). Dr. Loewen failed to meet these criteria, and it is interesting to note what he did, as well as what he did not do, in arriving at his opinion.[8]

Although Dr. Loewen was deposed by Defendants to testify as to the existence of bloc-voting in Rome, he opined concerning the wrong political unit, to-wit, Floyd County rather than the City of Rome. Loewen Deposi-

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[8]It is regrettable that the Court could not observe the actual demeanor of this witness in testimony; however, Plaintiffs respectfully refer the Court to the entire contents of his disposition.

tion at page 15. This is indicative of the knowledge of the witness to be examined and the foundation for his testimony under the above test. Furthermore, Dr. Loewen, although knowledgeable about Mississippi, was totally unfamiliar with the history, demography, racial makup and government of the State of Georgia, the County of Floyd, and the City of Rome. Id. at pages 20-23. He was totally unaware of any history of racial discrimination in Floyd County and Rome. Id. at page 22. He was totally unaware of the population of Floyd County and Rome. Id. at page 25. He did not know but "guess [ed he] would conclude" the percentage of blacks in Rome to be 28% and Georgia to be 26% (id. at page 25); nevertheless he admitted that such percentages and concentrations "certainly might" make a difference in his opinion. Id.

The election that Dr. Loewen analyzed was the 1968 Democratic primary for the United States Senate between the incumbent, Herman Talmadge, and Maynard Jackson, who now serves as Mayor of the City of Atlanta. He was uncertain who was the incumbent in the Talmadge-Jackson election, although he admitted that incumbency was an important consideration. Id. at page 30. We ask the Court to take judicial notice of the fact that Senator Talmadge had served as United States Senator from Georgia for twelve years at the time of the 1968 election and that he is a member of one of the leading political families in the State of Georgia. Dr. Loewen did not know about, or investigate, the political clout of the incumbent's opponent, Maynard Jackson, who was making his first run for public office in 1968. Id. at pages 31-33.

He did not know about, or investigate, campaign participation of blacks in the



City of Rome. Id. at page 51. He did not know how population was dispersed in the incorporated and unincorporated areas of Floyd County (id. at pages 42-43), nor which voting districts were in industrial or agricultural areas (id. at page 47), although he admitted that they "might make a difference" (id. at pages 47-48), as could different issues and offices. Id. at page 48. Summarily, Dr. Loewen testified, "Those factors could make a difference. I could be wrong." Id. at page 49. He did not know nor investigate political party activity in Rome, although he acknowledged that it could affect his opinion. Id. at page 52. He did not utilize the figures of any election other than the 1968 senatorial race, although there were others in which figures from different voting districts were available (id. at pages 36-37, 39), and those easily might have made a difference. Id. at pages 39-49. He did not consider any registered voter figures nor voting age population figures. Id. at pages 53-54, 59. He did not consider any of the depositions or evidence other than bare statistics in the case (id. at pages 56-57), nor any information about or history of registration and voting by blacks in the City of Rome. Id. at page 60. When Dr. Loewen made one of his analyses, he did not include even one of the five districts in the City of Rome, although that was the political unit about which he was to opine. Id. at pages 13-14, Exhibit 4. Indeed, Dr. Loewen could not identify all of the five city districts. Id. at pages 43-44. For the 1968 election analysis, he utilized the 1970 census figures supplied to him by another government witness, without making any adjustment for events and trends in the intervening years. Id. at Exhibits 2 and 3; John Tanner Deposition at pages 18-20.

Dr. Loewen's testimony with respect to "correlation coefficients" which noted a "very high, very strong relationship between white population and the voting white" (id. at page 11) simply failed to take into account the identity of the candidates in the 1968 race, which he examined. In contrast to the "correlation coefficient," the "overlapping percentages method", and the "Goodman-Ecological Regression" method, is the sworn testimony of white voters in Rome that they voted, with their family and friends, for black candidates. Furthermore, it is a fundamental principle of statistical analysis that correlations of coefficients do not show causation, and causation is the sine qua non of a finding of "effect". In fact, Dr. Loewen summarizes his results by stating that "I cannot state with certainty that Rome, Georgia, in every election since 1968 or from 1978 through 1988 will racially bloc-vote." Id. at pages 49-50. The Plaintiffs submit that no weight is to be given to any part of the testimony of Dr. Loewen or to any of his methods of hypothesizing the existence of racial bloc-voting in Rome.

The lack of evidence of the existence of racial bloc-voting in Rome indicates that the Plaintiffs are entitled to preclearance of the annexations and political changes before this Court, because such annexations and political changes could not have had the effect of discriminating with respect to the right to vote.

A. The Electoral Changes And Annexations Were Not Enacted With A "Purpose To Discrimate" And Should Be Precleared By This Court.



The Defendants have admitted that no discriminatory purpose exists with respect to the annexations. "(T)he record does not support a finding that the annexations were the result of a discriminatory intent... ." Brief for the United States at page 39.

The Defendants have also admitted that they have made no finding with respect to any discriminatory purpose of the electoral changes. "(T)he actual purpose of the electoral changes is unclear on this record." Id. at page 25. "Once again, the record does not reflect precisely why these provisions were adopted." Id. at page 27. Actually, Plaintiffs believe that Defendants have not fairly treated the evidence with respect to this issue. As Plaintiffs indicated in their Memorandum, the former City Attorney indicated in a letter to the City Commission that the "one man-one vote" requirement of Reynolds v. Sims, and related cases, required the electoral changes. See Private Plaintiffs' Memorandum at page 3. Without mentioning this letter, the Defendants have argued that since the other reason given by the former City Attorney for the changes was a mistaken belief that a majority vote requirement was required by Georgia law, some "inference" of discriminatory intent can be made. Even if the reason was incorrect, it was a belief genuinely held and non-discriminatory in nature.

Apparently acknowledging the lack of direct evidence with respect to this issue, the Defendants have fallen back to an "inference" of discriminatory intent, citying United States v. Texas Education Agency, 564 F.2d 162, 168 (5th Cir. 1977). Brief for the United States at

page 39. This, Plaintiffs urge, is not the appropriate test for determining an unlawful purpose, under the plain language of the Supreme Court in Wright v. Rockefeller, supra, Washington v. Davis, supra, and Village of Arlington Heights v. Metropolitan Housing Development Corp., supra. However, in the present case there is no room for the use of any such "inference", because the absence of discriminatory purpose is established by direct evidence and logic.. (For example, numbered posts follows as a mathematical certainty from the reduction of the number of wards from nine to three, which the Attorney General precleared as to Plaintiff City of Rome.)

B. The Electoral Changes And Annexations Do Not Have The Effect Of Abridging The Right To Vote On Account Of Race Or Color And Should Be Precleared By This Court.

The only "effect" to which the Defendants have pointed with respect to the electoral changes, is the race of Reverend Clyde Hill. This issue is discussed extensively above, but Plaintiffs would note further that Reverend Hill, according to the stipulated facts, received 48% of all votes cast in his run-off election, and under the stipulated facts, only 15.5% of the registered voters of the City of Rome at the present time are black. Also, as Plaintiffs noted in their Memorandum, the black witnesses testified that the current political leadership in Rome is very responsive to their needs. City of Rome Memorandum at pages 6-8, 57-62. This is in direct conflict with the assertion by the Defendants that "(t)he electoral changes...have the effect of depriving the black community of



adequate representation on the Rome City Commission and Board of Education." Brief for the United States at page 21. A black witness has indicated that the cooperation was more than "adequate;" it was the "ultimate." Moreland Deposition at page 40.

The "effect" of the annexations described in the Defendants' Brief is very difficult to discern. Of the thirteen annexations before the Court, nine of them contained no voters of at the time of annexation. Brief for the United States at page 22. The manner in which these annexations could have abridged the right of black citizens to vote, especially when no reliable forecast could be made of the eventual racial composition of the areas, is impossible to discern. It must be presumed that housing in these areas, as they grew, would be subject to the requirements of law with respect to non-discrimination. Thus, it is impossible to impute a discriminatory intent to the annexation of such barren geographical districts. Three other annexations, Homes Acres, Lyons Drive, and the Battey Hospital contained a total of 47 registered voters, at the time of annexation, all of whom were white. Id. With respect to these annexations as well as all annexations, Plaintiffs have indicated that no discriminatory intent was present in the actions. However, clearly these annexations would be de minimis in the context of a community which contains 13,000 voters. With respect to the Old Airport Community, the intent for annexation has been clearly established in Plaintiffs' Memorandum. This was an unincorporated "island" in the middle of the City of Rome, which did not have sewerage and which was "forced" upon the City of Rome by the Floyd County delegation to the Georgia General Assembly. City of Rome Memorandum

at pages 53-54. Defendants have made no showing that these small annexations, the natural functions of a growing city, were discriminatory in nature.

(Remainder of Pleading Omitted in Printing)

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EXCERPTS FROM DEPOSITIONS

Deposition of Bruce Hamler

Direct Examination

By Mr. Brinson:

[4] Q. And when did you become City Manager of the City of Rome? A. 1961.

[29] Q. All right, sir. I want to address myself to the 13 [30] annexations that remain objected to in the City of Rome and ask you to recall, if you will, those annexations? One is described as Saddle Mountain-Dupree and it was effected April the 8th, 1965. Do you recall that? A. Yes, I do.

Q. Generally at least? A. Yes, I do.

Q. Was that annexation, did that take place by Ordinance of the City of Rome or by legislative action? A. It took place by legislative action.

Q. Do you have any idea what was the population of the area as of that time? A. There were very few houses there. I guess it could have been ten, maybe twelve.



Q. All right, sir. Was -- what did the -- did the area consist of just the area where those ten houses were or was it a larger area or --A. It consisted of a larger area of -- of vacant lot land, vacant lots.

Q. All right, sir. How about Holmes Acres, East Eleventh Extension? How did -- did that take place by ordinance or legislative action? [31] A. Holmes Acres was taken in by legislative action.

Q. All right. Was -- what, as you recall, was the population of that area at the time of the annexation? A. It could have been -- maybe 15. I believe there was a house or two more there than it was on Saddle Mountain but not many, not too many. That was mostly vacant lots.

Q. All right, sir. How about Lyons Drive, West Rome on Alabama Road which was also taken in April 8th, 1965, was that by ordinance or legislative action? A. I believe Lyons Drive was taken in by ordinance.

Q. And do you remember the population of that area? A. That might --let's see, that was just one street mostly on one side -- maybe 20. I'm just guessing.

Q. Was there any vacant land or not? A. Yes, there was. There were vacant lots there.

Q. All right. A. They mainly wanted to come in because of no sewerage and they just really couldn't do much building there until they did get some city sewerage.

Q. Well, while we're at it, -- let's back up a minute -- what was your understanding of the reason for the request to annex Saddle Mountain? [32] A. They had a very poor water supply at that time that -- they were on the county system, and they had a very poor water supply. In fact, they didn't have much water at all, and they didn't have any sewerage, and so they --they wanted the city to give them sewerage and that was one of the main reasons, plus they needed to get their water supply improved.

Q. When you said they, do you mean the developers? A. The developers.

Q. And the owners? A. And -- and the owners. Right.

Q. All right. What about Holmes Acres, East Eleventh Street? A. The same -- the same thing would be true of Holmes Acres.

Q. To obtain city services? A. Right.

Q. And Lyons Drive? A. Same thing.

Q. To obtain city services? A. They did have city water, but they were in bad need of sewerage.

Q. Were there any alternatives to the sewerage services? [33] A. Not -- no, not -- the only way they could go would be in the city.

Q. Why is that? A. Well, because of the terrain and the fact that we were the only ones that had the system.



Q. Did the unincorporated area of Floyd County have any sewer system? A. No, they did not.

Q. What was the alternative to public sewer? A. Well, the way the state was enforcing the septic tank ordinance, they really didn't have too much because some of that land just wouldn't percolate when -- you know, they just wouldn't have been able to develop if they hadn't had city sewerage.

Q. Okay. Another annexation is the Georgian and Old Salem Apartments, April 18th, 1966? A. that was vacant land.

Q. It was vacant land? A. Yes.

Q. Were there any apartment buildings on it? A. No, Sir.

Q. What was their reason for annexation? A. They had to --

[34] Q. Or request for annexation? A. Have city sewerage and water and fire protection.

Q. Battey Hospital was annexed February 20th, 1967. Was that already developed or undeveloped? A. That was already developed.

Q. And what was the reason for annexation there, do you remember? A. The state owned that property, and they --

Q. State of Georgia? A. Yes, sir. And they had had a real bad experience with law enforcement problems in the area out there

and, as I recall, they -- well, they met with us on two or three occasions and asked that that be taken into the city.

Q. In order to provide them police protection? A. Right. Yes, sir. And also there was a problem that they wanted their children to go to school, too, and they had bus service.

Q. Can you generally describe this Battey Hospital area? Is it a development? A. Well, it's not really a development. It's a hospital with --I guess there may be ten or twelve residences there where the doctors live, and most of the personnel though that work out [35] there live off the site, but there are some homes out there for the doctors and I assume maybe some nurses. The fellow that's in charge out there, I believe he -- he did live here, but mostly the area is -- is a hospital and they've not, you know, -- they've got a generating plant out there and they've got a swimming place and they did have a fire department, and that's another reason -- that's one of the main reasons because they was maintaining a separate fire department out there and it was costing the state a good bit of money, and we were located nearby and they wanted to take advantage of our fire department.

Q. All right. Maplewood Square was annexed May 1st, 1967. What was the nature of that at the time -- A. Vacant land.

Q. Vacant land? A. Yes, sir.

Q. Was it to be a subdivision? A. Yes, sir.



Q. Why was or what was the reason for the request for annexation? A. They had to have sewerage also, and we had a trunk line extended up there to that area.

Q. Now, as to each of these I'm asking you, do you make [36] it your business to know the reasons for annexation? A. Yes, sir.

Q. And whether or not annexation is justified? A. Yes, sir.

Q. Garden Lakes-Rollingwood area, September 5th, 1967? A. That was vacant land.

Q. Was it accomplished by ordinance or legislative act? A. I believe ordinance.

Q. Was Maplewood Square accomplished by ordinance or legislative action? A. Ordinance.

Q. Was Battey Hospital accomplished by ordinance or legislative act? A. I'm -- I'm not going to be able to tell you. I don't remember. I believe it could have been legislative act.

Q. How about the Georgian Apartments, was that by ordinance or legislative act? A. I think that was by ordinance.

Q. All right, sir. Berkshire Estates was annexed February 19th, 1968. What was the nature of that at the time? A. That at the time was vacant land.

Q. Was it annexed by ordinance or legislative act? [37] A. I believe by ordinance.

Q. What was the purpose given you for the request for annexation? A. They needed water and sewer, fire protection.

Q. And was it in order that these areas be developed? A. Developed, yes, sir.

Q. When they asked for city services? A. Yes, sir. I might just interject one thing to clarify -- it's very hard -- difficult to get the state to approve any kind of subdivision nowadays that doesn't have a public sewer, and by that very reason that anything that's developed around the city is generally -- they ask to come in because they need it. They almost have to have it to -- to develop, even though it may be vacant land at the time, that's -- that's I think the main reason why most of these people, plus the fact that get much less water rates and so on, 50 percent of their --

[39] Q. All right, sir. Now, at the point we diverted a little bit, we were at Garden -- no, we weren't we were at -- A. Berkshire.

Q. Berkshire Estates. The next annexation is W. A. Dupree-Rockmart Road, February 16th, 1970. Was that accomplished by ordinance or legislative act? A. Ordinance.

[40] Q. And is that -- I'll ask you to describe that annexation? A. It was vacant land.

Q. Is it part of the -- A. To be developed.

Q. Saddle Mountain development? A. It is now. It is now, yes.



Q. What was the reason or the purpose for that annexation? A. They needed water and sewer.

Q. Next is Westminister Apartments, Harry Butler, May the 4th, 1970? A. That was vacant land.

Q. And what was the reason for that development? A. Same reason. He had to have sewerage and water.

Q. Was that accomplished by ordinance or legislative act? A. Ordinance.

Q. All right. Castle Cove Sub -- Castle Cove Subdivision area, February 15th, 1971. Was that by ordinance or legislative act? A. I believe that was ordinance.

Q. And what was -- [41] A. Now, my memory may not be perfect on all of these annexations, but I believe that that was ordinance.

Q. I understand that. A. If I miss them, you'll just have to tell me, but I believe that was an ordinance.

Q. All right, sir. What was the nature of that annexation or the reason for it? A. That was -- that was just -- just open land, undeveloped land.

Q. And what was the reason for the request for annexation? A. Sewerage and water and fire protection.

Q. Saddle Mountain No. 4, Bill Dupree? A. That's an extension, that would be the same thing. That was by ordinance and

I think the last that was brought in on that area was by ordinance. The first, of course, was by the state, but they needed sewerage and water there too.

Q. In order to -- A. To extend that on out.

Q. Continue development? A. Right sir.

Cross-Examination

By Ms. Jones:

[136] Q. Okay. And you also stated -- well, when these areas were annexed, could you say that they were annexed with a view [137] towards increasing the total population of the City of Rome? A. That and -- yes, and the tax digest.

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[157] Q. Okay. Mr. Hamler, you stated that the City of Rome hasn't conducted an election in about the past four years. Is that what you stated? Are you aware that -- A. It's my -- excuse me -- it's my --if I -- it may be, you know, I just -- three of the people on the Commission would have -- would have been due to be elected two years ago and six of them are due to be elected this year.

Q. This year? A. And they were elected for four-year terms, the four--the six that are due to be elected and there are three that are [158] past due to be elected.



Q. Okay. You stated that the reason could be -- well, in your opinion, was because of the changes that had been objected to by the Attorney General? A. It was my understanding from Mr. Brinson that if we held an election and had gone to the expense of having an election that the chances I guess were probably 100 to none that we would -- that they would not be approved, that the election would not be approved.

Q. Are you aware that the City of Rome was free to conduct elections as long as they did not implement the new changes? A. You mean the new changes that were made in '50 --

Q. That were objected to? A. Oh, the new changes in the annexations?

Q. And in the electoral system? In other words, that the City of Rome -- A. Back when it was changed in '56?

Q. No. A. I mean '66?

Q. Right. A. Was I aware that we could have had one of the old --

[159] Q. Under the old system, that Rome elections would have been deemed proper? Are you aware of that? A. I'm not aware of that.

***

Q. You also stated that in your opinion that there is no voting in Rome by race. In other words, the white voters vote

for candidates and not for white candidates, and the black voters vote for candidates and not black candidates. What do you base that opinion on? A. The only way I could base that opinion would be on -- opinion -- the discussion I heard when Rev. Hill run that at the time he was running in the run-off that very few blacks came to vote, and I know of a good number -- I'm going to be honest.

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Deposition of Horace Clary

Direct Examination

By Mr. Brinson:

[6] Q. All right. Now, what other public offices have you held in Floyd County or the city of Rome? A. For 19-1/2 years I was City Attorney -- up until you took over in 1968.

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[54] Q. All right, sir. Another change that was accomplished in 1965 was going from a plurality to a majority vote. If you will, please describe why you made that recommendation? A. Well, I had no choice in that unless I ignored the Georgia Election Code. In the meantime, Georgia passed many laws pertaining to elections and the Georgia Code very specifically [55] said it had to be by majority vote, and I had to put that in.

Q. Did you feel that the State Election Code would apply to the City's? A. Yes, I did. I knew it did.



Q. And at that time the city of Rome had a plurality vote? A. Yes. And it didn't matter to us about it. I was just -- put it in because the Georgia Election Code said I had to.

***

[56] Q. All right, sir. Now, let me ask you a series of questions. In connection with your recommendations to the City Commission and the representatives of the city of Rome -- I mean representatives to the State Legislature and/or from your observation of the passage of these changes, was there any racial motivation in connection with any recommendation you made or any change that you observed in connection with the change in the ward configuration? A. No, sir. Absolutely not.

Q. Was there -- A. Now, I will say this. I wasn't so stupid that I did not recognize the fact that - why the Georgia Legislature said it had been a majority, had to be a majority vote --but I had no choice on that if I followed the Georgia Law to get the thing passed, if they said it was majority, I knew why they did it, but I didn't think it mattered at all to the city of Rome, and I knew nothing would change anything. As I say, at that time and still today, the best of my knowledge, Mr. Bruce Hamler and the Commissioners have the 95 percent approval of the black voters, so I would have done nothing certainly to have diluted their vote or -- in any respect.

[57] Q. All right. Was there any racial motivation in the change from plurality to majority? A. Well, if it was, it was because it didn't -- frankly, it didn't even matter to us.

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Cross-Examination

By Ms. Jones:

[69] Q. Were you aware of your obligation under Section 5 as City Attorney for the city of Rome? A. I didn't even think about it. As I say, I knew about it from reading it in the paper, but what I was thinking about was that certainly what I was doing had nothing to do with any federal law about discrimination or anything because I'm -- ask anyone --I'm the last person in the world they would call a racist in the city of Rome. I felt like if we did what was right, we had nothing to worry about from anybody.

Q. So in other words, that's the reasons why the changes [70] that were adopted weren't submitted -- A. Right.

Q. Because of your views about the act itself? A. That's right. I felt first that it was unconstitutional. I still think so in spite of great legal scholars, and, second, I interpret the law to say if we did something to discriminate against the blacks, certainly action should have been taken, but I knew this did not.

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[77] Q. Okay. You stated that you recommended the majority vote requirement because you had no choice according to Georgia law? A. That's right. And, of course, Georgia's position on that is that we had some counties and some cities that had majority vote, some of them had a plurality. I personally am for the majority vote. Georgia tried to make it uniform throughout the state. I agree with it.



Q. But didn't the law say that if you had a plurality, this majority vote requirement does not apply to your cities that have --A. I have forgotten -- I haven't checked the law since I [78] wrote that --

MR. BRINSON: Now, wait, I'm going to object to the form of the question because -- Carmen, I'm not -- you may be right as to the Georgia Election Code, but let's not confuse the Georgia Election Code and the Georgia Municipal Election Code which was not passed until 1968. Now, if -- the witness can of course state what he knows about the Georgia Election Code which was passed in '64, but I don't want to -- now, I don't know -- I don't know because it doesn't specifically say that it applies to cities in the Georgia Election Code, but if it says -- had a plurality situation -- did it? Let me ask you that?

MISS JONES: What, did Rome?

MR. BRINSON: Did the '64 Code say that if there was a plurality -- existing plurality system --

MISS JONES: I'm sorry. I was speaking about the 1968 Municipal Code.

MR. BRINSON: Oh, okay.

MISS JONES: I thought that's what Mr. Clary was speaking of.

MR. BRINSON: No, this was -- A. No this was passed before the --

Q 40. Okay.

MR. BRINSON: This was the Georgia Election Code at [79] which time there was no Municipal Code.

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Exhibit "1"

CITY OF ROME
ROME, GEORGIA
July 6, 1965

Horace T. Clary
Attorney
Parker, Clary & Kent

Mr. S. L. Hancock, Chairman
Rome City Commission
Rome, Georgia

Dear Mr. Hancock:

Several days ago you asked me whether or not I had given any consideration to a matter that has been discussed by the City Commission on many occasions during the past few years as to the changing of the Wards within the City of Rome.

I might state that the Charter of the City of Rome allows the City Commission to change the number and composition of the Wards of the City, but I believe that there should be legislative action by the General



Assembly to change our Wards as during my tenure of office I have added to the Acts of the General Assembly that incorporated other property into the City a statement to the effect that each piece of property would specifically become a part of a certain Ward of the City of Rome. That being the case, I believe that the Legislature would have to make any changes in the composition of the Wards.

I know you understand that this is simply a tentative suggestion on my part and would require much study by the City Commission and our Legislators before any change is made.

I believe that for the best representation for all of our citizens the City of Rome should be divided into three (3) Wards, which, for the purpose of simplicity, I will designate as Ward 1, Ward 2, and Ward 3.

Ward 1 would consist of all of the City of Rome lying between the Etowah River and the Oostanaula River. Ward 2 would consist of all that property lying between the west line of the Oostanaula River and the Coosa River. Ward 3 would consist of all of the property lying between the Coosa River and the Etowah River.

In other words, Ward 1 would consist of our present Wards 1, 2, 3 and 6. Ward 2 would consist of our present Wards 4 and 9. Ward 3 would consist of our present Wards 5,7 and 8.

I have checked with Mr. Sid Thomas and his study indicates that the population in these three Wards would be almost equal.

I suggest that three (3) Commissioners be elected from each Ward, which will cause the Commission to remain numerically the same as it is today. I feel that the number of Commissioners should not be reduced as the terrific amount of committee work that must be done by the Commissioners require at least nine.

I feel that in each Ward there should be three (3) seats to be known as Seat No. 1, Seat No. 2, and Seat No. 3.

At the next election in 1968, I suggest that those persons seeking to be elected to Seat No. 1 in each Ward run for a term of two (2) years. Those persons seeking Seat No. 2 would run for a term of three (3) years, and those persons seeking Seat No. 3 would run for term of four (4) years. After the original 2, 3, and 4 year terms, each Commissioner thereafter, regardless of the Seat No., would run for a term of four (4) years. By doing this, there would be a continuity in government, which is generally agreed is of the utmost importance to a governmental body.

I feel that all of the citizens of Rome should vote for all nine (9) of the Commissioners as is done today. By so doing, each Commissioner feels that he represents all of the City of Rome and not any one particular Ward. In addition, by so doing, we automatically eliminate what is commonly known as "Ward heelers".



In addition to my mentioning the different setups of the Wards, I would like to call your attention the fact that I deem it of the utmost importance that our City Election Laws be modernized and brought into line with the Georgia Election Code as passed in 1964 by the General Assembly of Georgia.

I stand ready at your direction to prepare the proper legislation concerning both the new setup of the Wards and the election laws to be presented to the Legislators requesting their approval thereof.

Yours very truly,

/s/
HORACE T. CLARY
City Attorney

HTC:sh

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Deposition of C. W. Aycock

Direct Examination

By Ms. Jones:

[2] WHEREUPON, C. W. AYCOCK, after having first been duly sworn, testified as follows:

DIRECT EXAMINATION

By Ms. Jones:

Q. Would you state your full name? A. My name is Charles W. Aycock. I usually sign it as C. W. Aycock.

Q. What is your present address? A. 319 East Fifteenth Street, Rome, Georgia.

Q. What is your date of birth? A. February 14th, 1909.

Q. Where were you born? A. Rome, Georgia.

Q. What is your race? A. Negro.

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[14] Q. With respect to -- based on your activities in the black community, what are some of the things that black candidates do in their campaigning? Where are some of the places that they go? A. Well, the blacks -- I suppose it was a natural thing -- I think they concentrated more on natural places of congregation of blacks, which in this community would be the churches perhaps mainly. So I suppose you could single out the churches as the main places that the black candidates went and, of course, the black organizations, such as the National Association of the Advancement of Colored People, organizations of that kind.

Q. Did they confine their activities mostly to the black organizations -- excuse me -- the black churches and -- A. (Interposing) I would say they largely confined their efforts to that.



Q. Why was that? A. I suppose it was because they felt that was the only place [15] they would get real response --any response that would be effective.

Q. Did they campaign at all in the white community? A. I would say that that was negligible compared to the campaigns that they carried on in the black community.

Q. Were they ever asked to come to white churches or white organizations to campaign? A. Not to my knowledge.

Q. What do you think the response would have been if they had campaigned in the white community? A. I don't know, of course, what the response would have been. But from past performance, I assume that the whites would have largely voted for the white candidate.

Q. Do you recall whether or not Reverend Hill's activities during his campaign were confined largely to black organizations, black churches? A. Well, yes, it was confined largely to black organizations, black churches, places where you would expect large concentrations of blacks.

Q. Did he campaign at all in the white community, or do you know? A. I wouldn't say that he campaigned enough to say that it was considerable. I would say the greater part of it was in the black community.

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Q. How did Reverend Hill fare in the election that year? [16] A. He fared very well. In fact, he had a plurality. There were more than two people running. The others were white. Hill had the largest number of votes from the area from which he was running. But he did not have a majority; he had a plurality. And so he was not declared elected. They had to have a run-off.

Q. So what happened in the run-off? A. Well, in the run-off naturally they had the two highest vote-getters. And he lost in the run-off. He made a good showing, but he lost.

Q. What do you mean "he made a good showing?" A. Well, I mean by that that the blacks that had voted for him in the general election -- the regular election -- probably those same blacks, by and large, voted for him in the run-off. But he fell much further behind in the run-off -- well, he fell behind in the run-off. He was ahead in the regular election.

Q. Do you know how much white support he received in the general election. A. I would say it was very small. I would assume there was a very small, very negative amount of white support. Probably the greatest support came from blacks.

Q. What about in the run-off? How much white support did he get in the run-off? A. I don't assume that he got anymore than he got in the regular election, plus the fact that there was a scattering -- there was a multiplicity of white candidates in the regular [17] election. And I assume that most of the --



those who voted for the various white candidates probably voted for the remaining one white candidate, which completely over --

Q. (Interposing) Why was that? A. I suppose it was a natural voting pattern that had been developed. Blacks voted for blacks or for candidates that the blacks had endorsed, and whites voted for whites. And perhaps they concentrated on that one remaining white candidate.

Q. Do you know what the numbers of votes who were black voters who had registered before Reverend Hill ran for office or up until the time he ran? A. No, I don't know the number. No. All I could say about that is -- it would be going beyond your question -- would be that perhaps his candidacy created a lot of interest among blacks, and perhaps we had many more that registered and became qualified to vote and did vote.

Q. Why was their interest increased? A. I would say because they had a person that they felt perhaps had the best chance up to that time of actually being elected, and so they were just interested.

Q. Do you happen to know what the registration of blacks is at the present or since that time? A. No. I am sorry to say I don't know the exact figures.

Q. Do you recall what the turn-out was of the black voters at the election? [18] A. At the time that Hill ran?

Q. Uh-huh. A. I don't know the exact numbers, of course, and I don't know whether it was kept in that way. But the turn-out was, I would say, excellent, very good.

Q. How would you compare it to past years? A. Well, there was no comparison over the past years. It was very much improved over the past years -- much more interest.

Q. And since that election, how would you describe the black voter turn-out at elections? A. I would say it has gone down. The interest has decreased.

Q. To what do you attribute that? A. Well, to the fact that nobody has been elected, including Hill, who actually had more votes than anybody else, and it just dampened the people's spirits.

Q. Why is that? A. They didn't feel like anybody was going to be elected anyway, so the rank and file just didn't have the interest to go out and register and vote. They were registered, but they didn't vote.

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[19] Q. And why haven't you run? A. Well, two or three reasons. Number one, I was working for the City of Rome. And in most cases you just don't become too involved politically while you are working for the City. Number two, I suppose I had the same feeling that most blacks had and still have, that it would just be, oh, an activity in futility maybe.



Q. Why is that? A. Because of the system, having to run at-large. There would just be no way -- almost no way of being elected.

Q. Why? A. Because of the majority system and running at-large and the low percentage of blacks to the entire population in this area. The number just wouldn't be sufficient.

Q. In other words -- well, you mentioned that the majority vote requirement would hinder your chances. A. Right.

Q. Why is that? A. Well, that's a number thing there, just plain arithmetic, that you are going to have to get the majority of the votes of the whole city. And the majority of the people are white. Logically, it would just mean that the majority of the votes [20] would be white, and they would be for a white candidate.

Q. How do you know that? A. Past experience proves that. Blacks vote for blacks or for candidates whom the blacks have endorsed, and whites vote for whites.

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[21] Q. Mr. Aycock, based on your experiences and observations of the black community, what effect, if any, would you say Reverend Hill's defeat had on the black community's efforts to achieve representation? A. I would say that it really discouraged it. The black community just felt that, well, what's the use, and they didn't bother. So there was a feeling of complete and almost total discourage-

ment as far as seeking public office was concerned after that.

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Q. Okay. Mr. Aycock, could you tell us whether or not there is a list that is maintained by blacks at election time? A. Yes, there are such lists maintained.

Q. Could you describe these lists for us? A. Well, the lists are relatively simple. They simply name the candidates that blacks feel will be the fairest of the people that are running for a given office. And blacks are asked to vote for them -- those that are endorsed, and not to vote for those that are not endorsed.

[22] Q. What would you say the purpose of a list is? A. Well, the purpose is very clear -- to get people in office who are fair minded in the opinion of black people and keep those out of office who are not fair minded.

Q. What is usually done with this particular list? A. This list is circulated among blacks, taken to their homes, put on their door steps and their porches, and taken to meetings and talked about, so the people will be prepared and know for whom the blacks feel should be voted for at the time of the election.

Q. Are these candidates whose names are on these lists usually persons whom the blacks feel will represent them adequately? A. That's a difficult answer there. I suppose I



should say that they are the best people that the blacks can select out of the available people. And the available people may not include some that they would rather see on there. But since they are not running, sometimes it's perhaps the lesser of the evils in some cases and perhaps not the candidates that the blacks would chose, if they had an opportunity.

Q. Do you feel the blacks have been well represented by these various persons who have been placed on these lists? A. I don't feel that blacks have been represented as well as they perhaps would have been, if they had a chance of a larger selection, a larger choice, a wider range.

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[24] Q. Based on your experiences in the black community, Mr. Aycock, could you tell us why you think there has not been a single black candidate since Reverend Hill ran for office in 1970? A. Well, when Reverend Hill ran and failed to get elected, [25] even though he apparently was elected in the election in people's minds with that plurality vote, it just seemed to cast a sort of a shadow over people.

Q. By "people" what do you mean? A. Well, I had better say black people. And the blacks just didn't feel that there was any chance of being elected, and just nobody has come out to run. In fact, there haven't been any elections, I don't believe, anyway since 1974.

Q. During this period have you been encouraged to run for office? A. Yes, I have been encouraged all along to run for office, particularly since I -- well, I guess because I have been in the education system so long. So I had more encouragement to run for the board of education that for anything else.

Q. Has that been since 1972 -- 1970 also? A. Let me see. Well, yes, but not since the election process has been -- yes, even since 1970.

Q. Would you say that Reverend Hill's defeat had anything to do at all with your feelings about running for office? A. Naturally, it had some effect on me.

Q. Why is that? A. Because I would feel like others that it would just be a useless process to go into it. That would be one of the reasons that I wouldn't want to run.

Q. Based on what? [26] A. Just based on past experience, past performance.

Q. Of whom? A. Well, most recently in Hill's case. Because even with the blacks -- if they all voted one hundred per cent for the black candidate, unless you were able to get a large number of whites to vote, there is just no way to get elected with the system.

Q. Is there any way that you could get a large number of whites to vote for blacks? A. I don't know. From past experience, large numbers don't vote for blacks.



Q. Why is that? A. I don't know. I guess it is a pattern that has just been established. Blacks vote for blacks, and whites vote for whites. Blacks vote for blacks when there is a black to vote for.

Q. You stated that there is one black who has been appointed to the school board -- A. (Interposing) Right.

Q. -- Mr. Carmichael. Would you say he would face any problems, if he ran for office tomorrow? A. If he ran tomorrow under this present system, I think he would face the same problems any other black would face.

Q. What would those be? A. It would be the same system of this majority, at-large type voting. He wouldn't have a chance, if all the blacks in Rome voted for him, unless a lot of the whites voted for him.

[27] Q. Do you think a large number of whites would vote for him? A. I doubt it. I don't know, but I doubt it. They would have to reverse their previous performance.

By Mr. Hancock:

[28] Q. Let's just assume at-large elections were used. Would it help the blacks -- the black community to achieve representation, first of all, if there were no majority vote requirement? Would that be better than using the majority vote requirement? A. That would be better, yes. That would be an improvement.

Q. And it would also be better if the areas had not been annexed to the City? A. Yes.

Q. How about if there were no annexations and if plurality --

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Cross-Examination

By Mr. Brinson:

[52] Q. Doctor Aycock, you have indicated in your testimony that -- well, let me ask you some questions. Do you think that all blacks that voted in the 1970 election voted for Reverend Hill? A. I would think that the vast majority of the blacks that voted in that election voted for Reverend Hill.

Q. Why? [53] A. For the simple reason that Reverend Hill was black for one thing, and they felt that he was qualified. And he was the most likely -- he was the only black running.

Q. I understand that. But do you think that blacks just vote for blacks, or would they vote for the qualified man whether he would be black or white? A. I think they would vote for the qualified man, if they have the proper choice, if the choice isn't limited to where they just have to vote for the lesser of two evils. I think they would vote for the person they think is best qualified.

Q. All right. If you have a black running and a white running, and if you considered the white more qualified than the black, and he would be a better leader for you, would you vote for the white or the black? A. Well, that's a difficult question to answer. I would



possibly vote for the white in that case. That's not the question in my mind. It's the representation that the blacks are concerned about. And with no representation -- and that's about what it amounts to now -- it becomes just a question of academic discussion.

Q. Do you think whites are incapable of representing blacks? A. I wouldn't say that they are totally incapable. They just don't have the ability to speak the language of the blacks. The black community without any black representation is just not represented at its best. I am not saying that there are [54] not sympathetic whites and fair minded whites. I am not saying that.

Q. Well, would you advocate that the commission be mixed black and white? A. I certainly would advocate that it be mixed with black and white -- that all minorities be represented.

Q. All right. Let me ask you this, Doctor Aycock: When you say that you don't have any representation, do you feel that now that you don't have any representation simply because there is not a black on the city commission? A. In a way, as far as numbers are concerned, we don't. We don't have any representation. We are not saying that the whites are not doing something that is on there and trying to represent all of the constituents. But we have no representation at all, and there is no point in saying that we are in the know of things in the beginning or their inception or anything of this sort. There is nobody there.

Q. Would you say that it is more accurate -- which would you say is the more accurate statement -- that you have no representation on the commission or that there are no blacks on the commission? A. Well, we better not just try to confine that to one or the other. You are saying that we should say which is more accurate, saying we have no blacks or that we have no representation. No, it is somewhere in between would come nearer [55] to stating the truth. We don't have the type of representation or as much representation as blacks need and shall I say as whites need. It is not just a black problem. Everybody fares better, when the whole populous is represented.

[56] Q. In your opinion what would a black representative on the city commission do that the present representatives or members of the city commission are not doing? What would he do for the black community? A. Well, in the first place, he would be there to speak for [57] the black community. The black community would feel closer allies with him, I think, where they would go to him. There are many things done outside of these meetings where you see people independently and in person and talk to them about things. You are going to have to wait until the city commission meets, and then you have a little delegation sitting there to be heard to talk about this or to talk about that. I think it would be just a different sort of rapport between this person and the black community.

Q. Do you think that the present city commission or the city commission in the last eight or nine years has responded to the black community or ignored them, or how would



you describe their representation? A. I wouldn't say they have ignored the black community. I don't think they responded as well as they might have. I am not saying they didn't respond at all. I am not saying they ignored them at all. I think they would have responded in a much better way, if they had had a person there in that group that were black.

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[59] Q. Do you think that whites just vote for whites in a case like this? A. By and large, I think they do.

Q. Why do you think that? A. I guess it's a pattern that has been developed over the years. I can't explain that too much. But that idea is just something that is from actual practice. Blacks vote for blacks where there is a black to vote for. And in lieu of that, they vote for the one they think would be fair.

[60] Q. You indicated that Reverend Hill made a pretty good showing. A. He made an excellent showing.

Q. Do you think that all the votes he got were blacks? [61] A. No, I don't. I just indicate that I thought the majority of them were blacks. If I didn't indicate it, I implied it.

Q. Well, have you ever determined whether or not he got quite a number of white votes? A. No, I don't think he did. If he had gotten quite a number of white votes, there

is a possibility he would have won the run-off, so undoubtedly he did not get quite a number, if you mean by quite a number, a large number.

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Q. Now you have indicated that the turn-out of black voters [62] at that election was very good. A. Yes.

Q. How do you know that? A. There is a strong indication of that. For him to have that plurality even though there were serveral whites running against him -- that's the first time to my knowledge that any black person had gotten a plurality out of the other few that I named that had run for office, plus the fact that many blacks had registered and gotten qualified to vote probably of the interest in Hill.

Q. How do you know that? A. Well, Hill was chairman of this coordinating committee, and that put him very close to people, young and old. And there were a lot of people became active that hadn't been active before.

Q. How do you know the numbers, though, of black voters? How do you know that the turn-out was good or excellent, as you described it? A. I described it as excellent for the simple reason that out of those -- I don't remember exactly how many candidates were running -- that he had more than any other candidate. There is no reason to believe that a large number of those people were white. They weren't -- the whites were not going to vote for a man like Hill at that particular time.



He was chairman of the black coordinating committee.

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RE-DIRECT EXAMINATION

By Ms. Jones:

[75] Q. Mr. Aycock, you were asked whether or not the black community has been well represented by the present city commission, which is all white. In your opinion, are there [76] blacks in the black community who could better represent the interests of the blacks in Rome, if they were elected to the city commission? A. Yes, I think so.

Q. Why? A. Well, for the simple reason, among other reasons, just because they are black, and they have better pull with the black population. I am not saying that whites wouldn't do what they could, but no white man can realize the problems of a black man through and through, just like maybe the black man can't communicate the problems of the white man. And that's one of the reasons we are saying the thing needs to be mixed.

Q. If the black community had two candidates, one black and one white, equally qualified, who would you think would best represent the black community? A. If they were equally qualified, I would say the black person would best represent the black community.

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Deposition of H. F. Hunter, Jr.

Direct Examination

By Mr. Brinson:

[3] Q. What public office have you held, either as appointed or elected? A. Well, I served two or three years on the Rome-Floyd Planning Commission. I was appointed by the prior City Commission. I guess that -- I was appointed in the mid-sixties. I belive that's the only governmental body I've served on. Well, I did serve on the Citizens Advisory Committee during that same time, and then I was elected to the City Commission for a six-year term in 1968, and in 1974 was re-elected to a four-year term, and then was -- that same year or early in '75 I suppose it would be, I was [4] elected Chairman of the Commission by my fellow commissioners and still hold that office.

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[10] Q. As of that time, had there been any changes in the City Charter with respect to the objections that you had earlier? A. Yes. This was the first election under the new ward system where the wards were split up by the rivers, and there were [11] three posts, -- there were three wards and three posts in each ward, and the population at that time was -- I'm told was practically identical -- identical, within one or two percent for each ward, and, of course, they had the natural boundaries of the -- of the rivers and this was



the -- I think they set -- we had an election in the three, to achieve the staggered terms which were required by the new election code, there were three that ran for two-year posts, three for four-year posts, and three for six-year posts, and I was one of the six-year posts, and the election code provides for all subsequent elections to be for four-year posts, so basically what happened in two years after -- which would be I guess 1970, the two-year posts were up for election, and then two years after that, the four-year posts, and two years after that the six-year posts were -- which would be three of the six-years plus the three original two-year posts which were re-elected for four years, so it -- it goes that every two years, you have an election. You have two -- three that are up for election for one two-year period and six the following two years, and they are all for four-year posts.

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Cross-Examination

By Ms. Jones:

[65] Q. Uh-huh. Okay. Now, with respect to the annexations that have been made to the city, Mr. Brinson read you a list of annexations which are the subject of this law suite. You stated [66] that at the time the Rockmart and Castle Cover, Saddle Mountain --

MR. BRINSON: Excuse me, Carmen, I read him -- just to make the record exact -- I read him the five annexations of the 13. I didn't read all of the 13; I read him the five that took place when he -- since he's been in office.

Q. Okay. Thank you. You stated that those areas were -- at the -- at the time of annexation they had no residents? A. That's right. That's right.

Q. Okay. Yet they were annexed for the purpose of receiving city services? A. Uh-huh. Prior to development by the owners.

Q. Prior -- okay, so when they was -- when they were annexed, they were being annexed with a view towards developing? A. That's right.

Q. And that with a -- also with a view that they would eventually be inhabited. A. That's right.

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Deposition of Donald Jackson

Direct Examination

By Ms. Jones:

[2] WHEREUPON, DONALD JACKSON, after having first been duly sworn, testified as follows:

DIRECT EXAMINATION:

By Ms. Jones:

Q. State your full name, please. A. Donald Jackson.

Q. Do you have a middle name? A. No middle initial.



Q. What is your address? A. 512 Branham Avenue, Rome, Georgia.

Q. What is the date of your birth? A. August 25th, 1900.

Q. Where were you born? A. Rome, Georgia.

Q. What is your race, Mr. Jackson? [3] A. Negro.

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[7] Q. Are there any other organizations in the City of Rome of which you are a member? A. No, other than just the voter education committee. That's the only thing.

Q. And what is that? A. Well, it is an organization that was organized for the purpose of people registered and once they are registered, [8] getting them to vote.

Q. What people? A. Black people.

Q. Where? In Rome? A. In Rome, yeah.

Q. Do you recall when that was established? A. Do I recall what now?

Q. Do you know when that particular project was established? A. Back around -- it was back in the '60s, but I don't remember the exact time.

Q. And what was the purpose of that project? A. To get blacks registered and once they are registered, get them out to vote.

Q. Why was that type of project necessary? A. Well, it was necessary because at that particular time there were very few blacks registered in Rome.

Q. Why? A. Apathy is the only thing I could say about that.

Q. Apathy -- A. (Interposing) Among blacks. Among blacks, yeah.

Q. Why was there apathy among blacks? A. Well, the only reason I can think of there was because they figured -- I don't know. It has always been said that black votes weren't counted. And so for that reason, blacks have never been too hot about registering.

[9] Q. Who was it that said that black votes aren't counted? A. Blacks were the ones who were saying it. They didn't know, but that was what they said.

Q. Well, since you have been a member of the voter education project, how would you evaluate the success of the program? A. Well, for a while it was good.

Q. When? A. That was back in the '60s. The registration of blacks come up, way up.

Q. Was there any reason for that? A. Well, the only reason that I can see is because of a lot of pressure put on them by the members of the committee to go register.

Q. How would you evaluate the success since them? A. Well, it has gradually gone down since then.



Q. Why? A. Because they didn't vote and were taken off the lists -- off the register.

Q. The blacks who were registered didn't vote, so they were taken off? A. That's right.

Q. When was that? A. Ever since about -- oh, I would say -- they have been doing it all the time, but it was noticeable -- real noticeable in about the '70s, the early '70s.

[10] Q. What time period would you say the program was the most successful in Rome? A. At what time?

Q. Yes. A. In the late '60s and very, very early '70s.

Q. When did you first register to vote, Mr. Jackson? A. It was about 1960, I think it was.

Q. And you registered here in Rome? A. Yes.

Q. Did you have any problems? A. No problems.

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Q. Has there ever been a time when you were asked to speak on behalf of the blacks in the community of Rome? A. Yeah, I have on a number of occasions.

Q. In the black community? A. Yes.

Q. By whom? A. By the community -- people in the community.

Q. On what occasions or what types of matters? A. Registration drives, something concerning the voting and registering.

Q. Since you have been in Rome and during the period you have been a member of the voter education project, have you had an opportunity to observe the level of political participation of blacks in Rome? [11] A. Well, there is not very much participation of blacks as far as politics is concerned. I mean they don't pay too much attention to it, no.

Q. Why not? A. That's another case of apathy. They feel that the candidate that probably would be elected wouldn't make any difference as far as they were concerned.

Q. Why not? A. Well, there is nothing that they would probably do for them; at least that is the way they feel.

Q. What candidates are you speaking of? A. I am speaking about all of them -- the county commissioners, the city commissioners, and all of those people.

Q. In other words, are you saying that there have been problems with blacks receiving representation? A. Well, the people really don't represent the blacks. In other words, I mean you can ask most of the officials here in Rome about the black community, and they don't know anything about it.

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Q. Are you familiar with the election procedures that are used to elect city commissioners and members of the school board? A. Yes.

Q. What are those procedures as you understand them to be? A. You mean how do they go about electing them?

Q. Yes. [12] A. Well, you are required -- I think now they have just the residency, and they have to run from a certain district, but they are elected at-large and a majority. They changed it from a plurality to a majority.

Q. And what is a plurality as opposed to a majority? A. Well, the plurality is that the highest man wins; where a majority, you are going to have to have at least fifty per cent of all the votes that are cast.

Q. Has there been any problems with that particular election procedure that is presently being used in Rome? A. Well, the only problem is that it discourages blacks from trying to get elected.

Q. Okay. Which procedure are you speaking of now, the majority or the plurality? A. The majority. The majority, yeah.

Q. How does that -- A. (Interposing) At-large. See, they realize that it is impossible to get elected where you are going to run at-large and have to have a majority.

Q. Why is that? A. You can't get enough votes.

Q. Who can't? A. No black can.

Q. Why not? A. One of the reasons is you don't have enough blacks [13] registered to make any difference on there.

Q. What if you had enough blacks registered? A. Well, if you had enough blacks registered, you could, yeah.

Q. You could what? A. You could get elected here.

Q. How? A. Well, see, if you had enough blacks, you could get a majority. If there was enough of blacks running -- I mean voting, and the white candidates -- no, you couldn't do it like that, because you would have to get more votes than all the rest of the candidates, and you couldn't do that, no.

Q. Are you still speaking about the majority? A. Yeah, I am speaking about the majority, uh-huh.

Q. What is it about the majority system that makes it impossible to be elected? A. Because you can't get enough votes.

Q. From whom? A. Well, you have to depend mostly on black votes. Now if you are running for city commission, county commission, or one of those jobs, it's a known fact that you are not going to get too many white votes.



Q. Why is that? A. Because they are not going to vote for you.

Q. Has there ever been a time when that has been demonstrated? [14] A. It was demonstrated in the case of Hill.

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Q. Who is Hill? A. Reverend Hill. He is a fellow that ran for the board of education.

Q. Is he black? A. Yes, he is black.

Q. When did he run? A. I don't know what year it was when he was running -- maybe about '70. It was somewhere in the '70s.

Q. Could you tell us about his particular campaign? Why was he not able to get elected? A. Well, he did get into the run-off. But after he got into the run-off, well, then he couldn't win. He couldn't get near enough votes to win.

Q. How did he get into the run-off? A. I don't remember now how many candidates were running. Anyway, he was one of the two highest, and so that put him into the run-off.

Q. Do you recall who the highest was? A. It was some lady.

Q. No. I mean -- A. (Interposing) No. He was the highest. He was the highest, the way I understand it.

Q. In the election? A. Yeah, in that particular election. But not when it come [15] down to a run-off. He couldn't get enough votes to get elected.

Q. So he was defeated in the run-off? A. Yeah, he was defeated, yeah.

Q. Even though he got the most votes in the election? A. Yeah, I understand that, yeah. I don't remember the number of votes he did get, but I understand he was the highest in the election.

Q. What do you think caused him to be defeated? A. Because -- I don't know. For some reason the school board and the commission -- nobody -- you can't expect -- as I said before, you don't have enough blacks, and you can't get sufficient whites to vote for the average Negro. Now Hill was well known. He was well known.

Q. How well known was he? A. About as well known as any black in Rome. He was better known than most blacks.

Q. Why is that? A. Because he was the president of the black coordinating committee.

Q. And what was that? A. That was the committee that was formed to get jobs and a few other things for the benefit of the black community.

Q. What were some of the activities of the black coordinating committee? What kind of things took place with respect to that commit-



tee? [16] A. They went around to different firms and factories and all like that and applied for jobs to get employment for blacks.

Q. What else do they do? A. Well, they held meetings and tried to educate blacks to the benefit of registering and voting.

Q. Do you know why the coordinating committee was even established? A. Well, it was established for the simple reason that at that particular time blacks at that time weren't doing anything at all to help themselves.

Q. So how did this get them to help themselves? A. Through Hill.

Q. Would you say Hill as a candidate was pretty well known? A. He was well known, yes.

Q. How well known was he in the black community? A. Well, he was well known in Rome, all over Rome.

Q. Would that include the whites, too? A. Whites, too, uh-huh.

Q. What kind of things did he do in his campaign, if he didn't get elected? Did he campaign at all? A. Yes, he campaigned. He did all of the things that persons that are running for office usually do.

Q. Like what? A. He would go from place to place and talk and go with other candidates when they have meetings for candidates.

[17] Q. Was that in any particular area? Did he confine himself to the black community or the white community, or did he just go everywhere and try to campaign? A. Well, he went to most places. Now whether he went everywhere or not, I really don't know.

Q. How active was he in campaigning in the black community? A. Well, he was real active.

Q. How about the white community? A. Now if he went into the white community, the only time that I knew of him going was when other candidates would be invited to these places, and he would go with them.

Q. Was he also invited? A. Yes.

[18] Q. Was there any increased interest in getting blacks registered because of the fact that a black candidate was running? A. Yes.

Q. To what extent would you say that interest was increased? A. Well, in different churches and social organizations there was more effort made to get blacks to go and register.

Q. What about the black turn-out? Do you know what the turn-out was for Hill's election? A. Well, the turn-out was very good. It has never been overly good, but it was very good.

Q. How would you try to compare it with past turn-outs? A. Well, it was more than usual.



Q. Why was that? A. Well, on account of they had a black candidate.

Q. Have you had occasion to watch the turn-out since Hill's election -- I mean Hill's campaign? A. Yes.

Q. How does that compare? A. Well, it has fallen off.

Q. Do you have any thoughts as to why? A. Because -- well, now the main reason is that most people, like I said a few minutes ago, they feel that the candidate is [19] not too concerned with the blacks.

Q. What candidate? A. County commissioners, city commissioners, and this board of education, too.

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Q. What problems, if any, have blacks had in getting persons of their choice elected? A. Well, you can't hardly get a person of your choice elected, because you don't have sufficient votes.

Q. Why not? A. Because the people are not registered.

Q. You said they don't have sufficient votes. What do you mean by that? A. Well, I mean the blacks don't care how well they like [20] a man, white or black. If they don't have sufficient numbers registered, they don't have a chance to get him elected.

Q. If you had every black registered, and every black voted, would they still have a chance of electing a person of their choice? A. I don't think so.

Q. Why not? A. Well, I believe that gets right back to this majority.

Q. Why? How does that figure in? A. Well, because the man probably couldn't get enough votes even with all the blacks voting for him to have a majority.

Q. Why not? A. He wouldn't have them. There are just not that many blacks that are registered.

Q. What would he need to get elected? A. In a majority he needs fifty per cent.

Q. And if he doesn't have enough black votes to get elected, what does he need? A. Well, see, you have to have black and white. There is no -- see, now blacks cannot elect a black person or a white person.

Q. Why? A. Right back where we started. We do not have enough blacks that are registered to make that much difference.

Q. What if you had all of the blacks registered? Would you [21] still have a chance? A. If you had all of the blacks registered, and it was still at-large and majority, no.

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Q. How many black votes -- how much support do you think Hill got from the black community? A. Well, he had plenty



support. He got -- well, I would say maybe about ninety per cent, at least, of the black votes.

Q. Do you think that was what gave him a plurality? [22] A. Well, it would have in the election, yes, but not in the run-off.

Q. Why not? A. It wouldn't have been enough.

Q. Why not? What did he need in the run-off? A. In the run-off he would need to have the highest votes.

Q. When Reverend Hill was in this run-off, would he need more than the black support to get elected? A. Yeah.

Q. What else would he need? A. He needs white support.

Q. Do you think he got the white support? A. Some, but not much.

Q. Why not? A. I don't know why they didn't vote for him. I don't know whether it was because he was black or what was the particular reason. But we have to assume that they didn't vote for him, because he was black.

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[23] Q. In your work in the black community over the years and [24] of your experiences with the voter project, what effect would you say that the present election procedures have on blacks' ability to elect someone of their choice? In other words, what effect

would you say the at-large and majority vote requirement have on blacks choosing someone that they want and getting that person elected? A. I think that the blacks can be -- in fact, I know the blacks can be a lot of help to a candidate of their choice. I know that. Now we are getting back now to this: There are very, very, very few blacks that run for office or have been running for office.

Q. Why is that? A. Well, just as I said before, on account of at-large and majority.

Q. What is it about those that makes them not want to run? A. They can't get elected, and they know they can't.

Q. Why do you say they can't get elected? A. They can't get sufficient votes when you are running at-large, and you can't get sufficient votes if there is a majority. But now as far as -- getting back to these candidates of your choice, there have been any number of white candidates who were blacks' choice that did get elected.

Q. What happened? A. Nothing. They just got elected.

Q. Have they adequately represented the blacks in the [25] community? A. I don't think so, because most of the time --now maybe they don't go about it right or something. But I come in contact with a whole lot of people. And there are a lot of things that I think that probably should go before the city commission or that people -- blacks should do -- you know, I mean go -- but they don't. Now they go to Mr. Hamler.



Q. Have you ever been encouraged to run for office? A. Yes, I have.

Q. Has it been often or once or twice? A. Well, any number of times a few years ago, yes.

Q. Why didn't you run? A. I didn't have a chance of winning. I didn't think -- at least I didn't think so.

Q. Are you well known in the city? A. I think so.

Q. Why don't you think you could get elected? A. I could not get a majority, to start with. I know that.

Q. Why not? A. I couldn't get enough people to vote for me.

Q. Why do you feel that, if everybody knows you? A. Well, see, even though I know a lot of white people, and a lot of white people know me, and some of them would vote for me. But it wouldn't be enough of them, with the few blacks that are registered, for me to get a majority.

[26] Q. What if all the blacks were registered, and all the blacks voted, would you still get elected with a majority? A. No.

Q. Why not? A. There are not enough blacks registered. Even if they would all go and vote, you still wouldn't have enough.

Q. So you would need white support? A. You would have to have a lot of white support.

Q. And you don't think you would get enough? A. No.

[27] Q. If those annexations were to remain, could the dilution that they caused be remedied at all? A. Could it be remedied?

Q. Yes. A. I don't know of any way to remedy it, because you can't put them back out of the city.

[28] Q. What I am saying is if you brought in the white population -- increased the white opulation -- and you have the blacks -- and you stated that the effect of those annexations would be diluting the blacks that are already here. A. Yes. That's right.

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Q. What do you think could be done to equalize the situation sort of? A. Well, I think what they might could do, if they would go back to wards, then it would depend then on how the lines were drawn.

Q. What else do you think could be done with respect to election procedures? A. Well, you would have to drop this at-large. You would have to let the person be elected from the ward that he was running from.

Q. What if you kept at-large? What could you do? A. At-large -- no, you would have to cut out at-large.

Q. What about plurality or majority vote? A. Well, plurality is all right, but majority -- as long as you have majority, there is not much chance.

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[30] Q. Mr. Jackson, do you know about a list that is maintained by blacks at election time? A. Yes.

Q. Could you tell us about those particular lists? A. Well, the lists are made up -- now there have been -- in the last two elections there were three lists. Now the lists were made up by the voter education committee. We have the candidates to come out to these different churches and places like that. And then the people decide what candidates that they think are better for the blacks, what candidates are more concerned with the blacks, the problems and so forth.

Q. What do they do then? [31] A. Then we make up this list and endorse certain candidates.

Q. What do you do with the lists after you put them -- A. (Interposing) It is passed out in the city -- passed out in the city.

Q. Is there more than one list, or do blacks stick together and -- A. (Interposing) Well, there were three lists in the last election. I don't know what organizations were passing them out, but I do know there were three lists passed out.

Q. Who compiled the lists? A. James Wright, Joe Wright --

Q. (Interposing) Is this one list? A. -- and a person named Burge.

Q. Was that for one list? A. It was a different list from the voter education committee list.

Q. That's the list that you would be familiar with -- that was your project? A. Yeah. But this other one was -- I don't know if they had a name. But anyway, they did have candidates -- endorsed candidates. And the three people that were endorsing them --names that were on this list was James Wright, Joe Wright, and Burge.

Q. What about the third? A. The third list -- I don't know whose -- remember now whose [32] name was on it.

Q. Was it an individual? A. It was some three individuals, yes.

Q. But yours was an organization? A. Yes.

Q. Are these candidates on these lists that the blacks put out, are they usually candidates who blacks feel will represent them in the best way? A. Yes, that's what they think, yeah.

Q. Do the candidates on the lists that the blacks endorse -- are they often elected? A. A whole lot of times they are, yes.

Q. Once they are elected, do the blacks feel that they are being represented adequately by these candidates? A. No, they don't.



Q. Why? A. Well, because, as I told you a while ago, a lots of times I have people to come to me, but they don't never talk about the commissioner, because the commissioners have said -- I mean it was in the paper. I cut it out, but I couldn't find it today where someone from the justice department was talking to them. And they had no idea about the black community, about what was happening in it or anything else. Now people -- all the time when they want something -- not all the time maybe, but nine times out of ten when they want something, they go directly to [33] Mr. Hamler.

Q. As opposed to what? A. As opposed to going to the commissioners.

Q. Is Mr. Hamler elected? A. No, he is not elected.

Q. So in other words, the people who were thought to be representative of the blacks are not the people who the blacks go to? A. No, they don't go to them, uh-uh.

Q. Okay. With respect to these lists, are there persons who might probably better represent the black community than the ones who are endorsed? A. Well, you can't never tell about how a person is going to act, after he is elected. But in our opinion, the people that we endorse are the people that we think that's going to be better as far as we are concerned.

Q. Has there ever been a time that the black community has endorsed a particular candidate, actually represented the black community? A. I really don't remember any, to tell you the truth. I mean I don't --

(COLLOQUY BETWEEN THE TWO DEFENSE ATTORNEYS.)

I would like to say this: Of all the candidates that I have known down through the years, I would say that Commissioner [34] David Harvey probably has did more than anyone else that I know of.

Q. Okay, Mr. Jackson. Do you think that there are people who were not candidates and who were not on those lists who would better represent the black community? A. No, not in our opinion there wasn't. We pick what we think is the best person as far as we are concerned.

MR. HANCOCK: Let me interrupt just a second. We are talking about everyone, not just the candidates. Are there people in the black community who you feel would better represent you than the candidates?

A. Are you speaking about black people or just people?

MR. HANCOCK: People in general.

A. Well, there probably is, but they are not candidates.

MR. HANCOCK: What you are saying then is that your list is just of the available candidates?

A. Of the people who happen to be running at that particular time, yes.



MR. HANCOCK: You are not saying that those are --

MR. BRINSON: (Interposing) I am going to object to your testifying, Paul. My objection is that it is a leading question, and it will be thrown out. And I -- that's why I am objecting now, so you can ask it properly. And it's also improper for two of you to ask questions. But I mean I want the record to show that there are two people representing the Justice Department [35] here. There is one representing the city. There is one questioning for the city, and there are two questioning for the Justice Department. Now that is not proper under my understanding of the Federal Rules of Civil Procedure and the discovery process. But I can be lenient about it. I just don't want to be lenient about and the leading, too.

MR. HANCOCK: Are you finished with your (inaudible)? Did you understand what distinction we are making between just candidates and other people who might be candidates?

A. Well, there is always someone that is better. I mean that happens in all races. There are better people that are not running than some of the people that are running. But the people that are better and not running -- there is nothing you can do about it.

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Q. With respect to the school board and the city commission, which are elected offices -- A. (Interposing) Uhhuh.

Q. How did it come about that Mr. Carmichael was appointed [36] do you know? A. That he was elected -- I mean appointed?

Q. Right. A. I don't know, no. I don't know.

Q. Was the black community -- was he filling a vacancy or what. A. Oh, yes, he was filling a vacancy, yes.

Q. When does a vacancy come up; do you recall? A. I don't remember the date on that, no. It was about two years ago, I guess. I don't know how the vacancy come up. I don't know whether someone resigned or what happened, but I do know they had a vacancy.

Q. Do you recall whether any members of the black community or any black organizations were contacted with respect to giving suggestions for filling the vacancy? A. No one that I know of, no.

Q. What about the city commission? Have there been any vacancies on the city commission that you can recall? A. Yeah, there has been one or two on that, yes.

Q. Were there any communications with members of the black community or members of the black organizations about possible suggestions for that vacancy? A. Not that I know of.



Q. Have you ever been consulted? A. No.

[37] Q. Do you feel that Mr. Carmichael has been a pretty good representative of the black community? A. Not of the black community, no.

Q. Why not? A. Well, Carmichael is a good man, but he is not concerned with blacks, period.

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REDIRECT EXAMINATION

BY Ms. Jones:

[71] Q. Would it be the same if you ran for, say, the city commission or school board? Would you have as easy a time? A. No, no. That would be difficult.

Q. Are those -- A. (Interposing) Any meaningful job, it would be difficult for not only me, but any black, to win.

Q. Why? A. Because of the system that is used -- at-large and majority. Those are the two main obstacles right there.

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DIRECT EXAMINATION

By Ms. Jones:

[2] WHEREUPON, JOE WRIGHT, after having first been duly sworn, testified as follows:

DIRECT EXAMINATION: By Ms. Jones

A. State your full name. A. Joe Wright.

Q. No middle name? A. No middle name.

Q. What is your present address? A. 814 South Broad Street, Rome, Georgia.

Q. What is your date of birth? A. Date of birth is January 17, 1932.

Q. And where were you born? A. I was born in Centre--Cherokee County, Alabama.

Q. Mr. Wright, what is your race? [3] A. Black.

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[5] Q. Okay. During the time you have lived in Rome and the time you were president of the NAACP, have you had the opportunity to observe the political participation of blacks in the community? A. Yes, I have.

Q. What have you observed? A. Participation has been nil, really. Hasn't been



that much participation as far as being elected to public office and that sort of thing.

Q. Is there anything else you observed? A. In what respect are you speaking now?

Q. Well, by "participation" I mean have blacks actively sought office? Have they registered on a regular basis? A. Oh, yes. Registered.

Q. How much do they participate in politics here in Rome? A. Quite a bit, yes.

[6] Q. In what respect? A. Registering and getting people out to vote and that sort of thing -- endorsing candidates.

Q. Have there ever been any problems that blacks have been faced with in electing representatives of their choice to any public office? A. Well, we haven't been able to elect public officials of our choice.

Q. Why is that? A. Because of the present voting system in Rome.

Q. And what is that? A. I feel it is designed to dilute the black vote.

Q. Why do you say that? A. Because it is structured city-wide voting, and this way, blacks cannot get enough votes of the white population to be elected.

Q. Is there anything else about the way the elections are held? A. Well, I think that blacks could get 100 percent of--well, a

candidate of our choice could get 100 percent of black votes and still could not get elected.

Q. How much does a candidate have to get to be elected; do you know? Do you know what the percentage is? [7] A. Fifty-one percent.

Q. Of all of the votes? A. Of all of the votes --right.

Q. Does that pose a problem for blacks? A. Yes, it does.

Q. Why? A. Because it is just not enough black people in the community to give a candidate fifty-one percent of the votes.

Q. What about the whites in the community--do they give a candidate fifty-one percent of the votes? A. If they block voted, they would.

Q. Do they block vote as a general rule? A. I would think so.

Q. In what way do they block vote? A. Vote for their candidate.

Q. Okay. Are we talking about the white voters? A. Right.

Q. Who would their particular candidate be as a general rule? A. Well, the candidate of their choice would not necessarily be the candidate of the black people's choice, but we are caught in the dilemma of voting for the better of the two candidates subsequently.

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Q. Have there been any blacks who have tried to be elected under this system? A. Yes. Reverend Clyde Hill ran for public office. He was [8] a minister of the East Rome--the Greater Mount Calvary Baptist Church at the time that he ran for election.

Q. When did he run for office and what office did he run for? A. He ran for the board of education back in 1970, I believe.

Q. What types of problems did he encounter? A. Well, he--getting enough votes--get enough votes to win. He won the election in the primary, but in the run-off he lost the election. I think this is because of the way the system is set up. He had to have fifty-one percent of the votes to win in the run-off.

Q. Well, how do you--how did he win the election primary, as you put it? A. I think he did a good job campaigning and he got out and met a lot of people and he got support, the black community particularly.

[11] Q. Could you explain for us how he did, then, in the election? A. I think he did a tremendous job as far as his campaign and all is concerned and getting out, as well as you could do.

Q. As well as anyone at that time could do? A. Yes

Q. Black or white? A. Black or white, yes, as far as campaigning is concerned.

Q. Did he win? A. No, he didn't win

Q. Were you surprised when he lost? A. Yes, I was.

Q. Why was that? A. Because of all the effort and work that had been put into his campaign and the popularity that he had gained at that time.

[12] Q. Why did he lose? A. He lost simply because of the way the voting system is structured here.

Q. And what was that? A. If it had been designed where he could have gotten --on a plurality system, I will say that he would have won.

Q. What is that? What kind of system is that? A. The one that gets the most votes.

Q. How many opponents did he have? A. If I remember correctly, he had two opponents.

Q. Were they white? A. Yes.

Q. And he got the most votes out of those -- A. (Interposing) Right.

Q. -- that field of candidates? A. Right.

Q. Do you recall how many votes he got in the run-off? A. No. He didn't do well in the run-off.



Q. Did he do nearly as well as he did in the primary? A. No. He did real well in the primary, and in the run-off he didn't. And I think if he had gotten a larger number of white folks, he would have won.

Q. So you believe he got considerable black support? [13] A. He did, yes.

Q. Did he get any white support at anytime during that election? A. I don't know. If he did, it was very little, I would say.

Q. Do you think he would have lost that election, if he hadn't been required to get fifty-one per cent of the votes? A. No. He would have won the election.

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Q. Okay. Based upon your experience as NAACP president and the experience you have had working with the black community, what effect, if any, do you think the present election system has on the black community's ability to elect someone of their choice? A. Well, it has all the effect on it in an election the way it is. I just don't think it could be done. I think this is why we don't have blacks to run for public office now, because of the expense involved and the knowledge of knowing that they are not going to get enough white support to win.

Q. How do blacks know they won't get white support? A. Well, after the effort that was put forth to elect Reverend Hill. It's just from past experience.

[14] Q. Have you ever thought about running for any office? A. I have thought about it.

Q. Which one? A. Well, I have thought about running for city commissioner.

Q. Why didn't you run? A. Well, I know that it would be almost an impossible task.

Q. Why is that? A. Well, the way the system is designed, simply. That's it.

Q. What are some of the other things that might discourage you from running? A. I don't know of anything, really, that would discourage me from running.

Q. Besides what you just said? A. Besides what I stated.

Q. And what would that be again? A. That would be the way the system is designed.

Q. What about the system would keep you from even trying? A. Well, the city-wide voting would make it impossible--almost impossible for me to be elected to a public office, I feel. If it was changed to where the majority of the votes would win the election, then I think I would have a good chance, if I ran for public office.

Q. Do you mean a plurality? A. Plurality. Excuse me.



[15] Q. What effect did Hill's defeat have on the black community's ability to elect someone of their choice or your feelings about running? A. Simply, like I stated previously, all of the effort and time that he put in, and he did such a tremendous job of campaigning, and he did not win. This would discourage, I think, a black to run again under the present system.

Q. Do you know of any other blacks who might be discouraged the way you stated you are? A. I think -- yes, I do.

Q. Have you encouraged other blacks to run? A. I asked a friend of mine, James Wright, if he would consider running for public office. He said that he would consider it, but he didn't think he could win.

Q. Is he a popular individual in the city? A. Yes, he is.

Q. Among blacks and whites? A. Yes.

Q. What kind of support do you think he could get or would he get, if he ran? A. I think he would get good support out of the black community.

Q. Wouldn't that be enough? [16] A. No, that wouldn't be enough.

Q. Why not? A. Because the population of the blacks would not warrant enough votes to get him elected.

Q. Why not? A. The way the system is designed.

Q. What is the population of the blacks? A. Around twenty-two per cent, twenty-three per cent of the population of the city.

Q. How does that relate to the requirement that the candidate get fifty-one per cent of the votes? A. Well, there simply is just not enough blacks to vote, even if you have got one hundred per cent, to elect him to public office.

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[20] Q. Have the candidates whom the blacks have endorsed -- have they ever been elected? A. Yes.

Q. Have those candidates been responsive, or have they been adequate representatives of the black community? A. No, I wouldn't say they have.

Q. Why did the black community endorse those candidates, if they were not responsive or adequate representatives? A. Well, they were, we felt, the better of the candidates.

Q. Why? A. Because this is all we had to go with.

Q. Why didn't the members of the black community put up their own candidate, if they didn't think those who were running would represent them adequately? A. Well, it goes



back to -- we had a candidate, Reverend Hill, who ran and lost. Of course, we felt that it would just [21] be fruitless to have a candidate and nobody feel that they could win, so subsequently we didn't have one.

Q. Did the blacks feel that Reverend Hill was about the best they could get for a candidate? A. At that particular time, yes.

Q. Are there any blacks presently who would be maybe as popular, but run into the same problems? A. Yes, I think so.

Q. And who would be as qualified. A. Right.

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Q. Did the school board ever contact the NAACP or any black members of the community for suggestions for filling that vacancy? A. Yes. We were told that a vacancy had been created. Of course, we asked the school board to consider a black at that [22] particular time. They asked us to submit the name of a person we felt that would serve or could serve adequately.

Q. The NAACP? A. I am not sure. I was president at that time. I am not sure if they asked us directly or not, but I know that we got -- the NAACP did get together, had a meeting, and submitted a name to the school board.

Q. Was that suggestion acknowledged at anytime? A. No, it wasn't, no.

Q. Was the person that you suggested appointed? A. No.

Q. In other words, you didn't suggest Elgin Carmichael? A. No, we didn't.

Q. Would you feel that the person that was appointed has adequately represented the black community? A. No, I wouldn't.

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Q. Do you think Elgin Carmichael could get elected, if he ran for that same position? A. No, I don't.

Q. Why not? A. Because he wouldn't get enough white support. And I think even though he might get the black support, it still wouldn't be enough to win.

Q. In other words, you think he might be able to get some support from the blacks? [23] A. Yes.

Q. Is he well known throughout the City? A. Yes, he is.

A. Do you think he could get elected if there was no majority vote requirement? A. Yes, I do.

Q. Why? A. Because he would get enough support out of the black community, I think, to win an election, especially if there were two or three candidates opposing him.

Q. Do you think he would get enough support from the white community, if there was



no majority vote requirements? A. No, I don't.

Q. You don't? A. No.

Q. Do you think anyone else in the black community could get enough support from both blacks and whites with the majority vote requirement? A. No, I don't.

Q. Is there any black in Rome who could get elected under the present voting system? A. No, there isn't.

Q. Why do you say that? A. Because there just would not be enough black voters to get one elected.

[24] Q. What if you got all black support, one hundred per cent? A. Still would not be. They could not get the white support which is necessary to win an election in Rome.

Q. Why do you say that? A. Because the way the system is designed, you have got to run city-wide. And with the number of population, white as opposed to black --

Q. (Interposing) Are you saying that whites wouldn't vote for the black candidates? A. No, not significant, not enough to amount to a win for the candidate.

Q. Why? A. Because it's just not done in Rome.

Q. Why not? A. I don't know.

Q. Has it ever been done in Rome? A. No blacks have ever won an election.

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Q. Has there been an appointment to the city commission? A. No, there hasn't.

Q. Have there been any vacancies? A. Yes, there has been a vacancy.

Q. When was the last vacancy that you can recall? A. Not last year, but the year before last -- the last part of the year before last.

Q. Do you know how that vacancy came about? [25] A. No, I don't.

Q. Did the city commission contact the NAACP or any other black individuals? A. The NAACP got information that there was a vacancy. And, of course, we asked the city commission to appoint a black at that time or consider a black for appointment. And to my knowledge, no response was given to that request.

Q. Do you know who was ultimately appointed to the vacancy? A. I am not sure which member was appointed.

Q. Was it a black person? A. No, it wasn't.

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Q. Mr. Wright, has the city commission been representative of the black community as a whole? A. As a whole, no.

Q. Why do you say that? A. Because there are a lot of needs of the black community that haven't been met -- streets paved and this sort of thing.

Q. What type of person do you think would be necessary to give the black community adequate representation? A. I would think a black person, a black candidate, a black member would certainly know and feel the needs of the black community, and this would help.

Q. What if a candidate was not black? Is it possible for a candidate to adequately represent -- A. (Interposing) Sure it is, yeah. Our contention has [26] never been just to get black representation, but representatives that were responsive to the total needs of the community. We want a qualified person, certainly, but we do feel that there are some black qualified people. And if they had a chance to win an election, they could run, and we could have black representation.

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CROSS-EXAMINATION

By Mr. Brinson:

[32] Q. So when you say that you can't elect anybody of your choice, what you really mean is you can't elect the black of your choice? A. No.

Q. Well, what do you mean? A. I mean a person that is responsive to the needs of the black community. We are usually caught in a dilemma of getting [33] the better of the candidates and going with that -- supporting that particular candidate. It doesn't mean that that's our choice, but it's the choice of the two candidates.

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REDIRECT

By Ms. Jones:

[45] Q. Mr. Wright, you were asked whether or not the present city commissioners are responsive to the needs of the black community. Do you think they are as responsive as a representative [46] of the black community would be? A. No.

Q. Why is that? A. They are just not as responsive. I think a black representative would really know the needs of the community.

Q. Does the person who represents the community have to be black, or is it someone who just represents the community as a whole? A. Just someone that represents the community as a whole, preferably a black, because he would naturally know the needs of the blacks better than a white candidate.

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[48] Q. If there are no obstacles in registering blacks, what obstacles are there for the blacks with respect to elections and voting? A. Even though we have a good number of black citizens registered to vote, a candidate that would run needs the support of the white voters in order to win the way it is designed -- the way the voting system is designed now.

Q. Why does that pose an obstacle? A. Because it is just diluted to where the black voting strength is not enough for a black candidate to win an election.

[49] Q. And are black candidates able to get that white support, or candidates of the black community's choice? A. If they get the white support, they would win an election.

Q. Do they get it? A. No, they don't.

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Deposition of James Wright

DIRECT EXAMINATION

By Ms. Jones:

[2] WHEREUPON, JAMES G. WRIGHT, after having first been duly sworn, testified as follows:

DIRECT EXAMINATION: By Ms. Jones

Q. Would you state your full name for the record? A. James G. Wright.

Q. And what is your present address, Mr. Wright? A. Home address, 111 Perkins Street.

Q. Is that in Rome? A. Rome, Georgia.

Q. How old are you? A. Forty-five.

Q. And what is your race? A. Black.

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[6] Q. So blacks are renting? A. So blacks are renting. So I felt that this might be used good, if it were used in the black community to upgrade the streets for curb and gutter.

Q. How was the block grant money used, as far as you know? A. Well, as far as I know now, it is being used now to upgrade some houses in the black community in the South Rome area. And I think that's good.

Q. And you had spoken out on that? A. Right.

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Q. Okay. Based on your experience in the black community during the years you have been in Rome, have you had the opportunity to observe the political participation of blacks -- A. (Interposing) Yes.



Q. -- and their level of activity in the political process here? A. Yes, I have.

[7] Q. How would you describe blacks' activities in politics overall? A. As far as running for office, I would describe it as poor.

Q. What about registration? A. Registration. We have had some registration drives. And at one time I think we did real well, but right now it is down a little bit. But we plan to have another drive sometime this summer.

Q. Could you describe for us the present election system that is used in Rome for electing public officials? A. Well, the way I interpret the present system now, it is based on a ward system. I think we have one, two --we have three wards, and in order to win you must have fifty-one per cent of the votes in order to win.

Q. Now the candidates run from wards? A. The candidates run from wards, but you be voted on city-wide. Right.

Q. Does this particular system pose a problem for blacks in Rome as far as electing people of their choice to office? A. Yes.

Q. Why? A. Because I don't feel that a black can get elected under the present system in order to win with fifty-one per cent, because there are not enough blacks in the community to have that majority.

[8] Q. But aren't there whites in the community? Blacks aren't the only ones in the community. A. I know, but I just don't feel that enough whites will vote to elect a black under the present system.

Q. Why not? A. Well, I don't feel that Rome is ready for it. I just feel like that there is too much prejudice in this town to accept a black under the present system. I feel that way.

Q. Does that apply to all whites? A. No.

Q. Does it apply to a significant number? A. I would say a number, yes.

Q. What do you base that on? A. Well, I base that on -- from the time that Reverend Hill ran -- Clyde Hill. He got the majority of the votes in the election, and then in the run-off he didn't get fifty-one per cent, so he lost.

Q. When you say he got the majority of votes in the election, what do you mean? Do you mean he got the highest number? A. He got the highest number of votes in the election, but he didn't have fifty-one per cent, so that means there had to be a run-off.

Q. What happened in the run-off? A. In the run-off he got less than fifty-one per cent, so he lost. But had it been -- had the law been where you win with [9] a simple majority -- I hope I'm right -- simple majority, then he could have won.



Q. Simple majority -- what is that, as you know it? A. Well, the way I interpret it, the one that has the most votes, he wins.

Q. What is it when you have fifty-one per cent of the votes? What is that called? A. I guess that would be the majority of the votes.

Q. So we are using the same term to mean different things? A. Different things, right.

Q. Okay. Now what is meant -- do you know what it is called actually when the person gets the highest number of votes? There is a term. A. Plurality.

Q. Okay. If there had been a plurality system when Reverend Hill ran, would he have won? A. Yes.

Q. What was in effect at the time? A. The city-wide voting.

Q. And what else? A. Huh?

Q. City-wide voting and what else? How many votes did he have to get? A. Fifty-one per cent. Right. But I would like to say that I think that if we would go to the ward system and vote in the [10] ward system on a plurality vote, I think the black would stand a better chance of being elected. For instance, in South Rome and East Rome and possibly North Rome -- I don't know exactly what percentage we would have, but in South Rome I believe we would come somewhere in the neighborhood of forty something per cent; and

maybe East Rome thirty-eight or thirty-nine per cent; and maybe North Rome thirty-five per cent or something like that. And if we vote in the ward system, I feel like that we would have a better chance of winning.

Q. Why is that? A. Well, if five candidates ran, and you would vote in this particular ward, and it was thirty-five or forty per cent in the black community, I feel like that we would pick up enough votes in order to get the majority.

Q. Would there be whites who might vote for the blacks in those wards? A. Sure. I think some whites would vote for blacks, yes.

Q. Have you ever proposed that such a system be established in Rome? A. Yes. I talked with Buddy Childers, state representative, and we talked about a couple of plans. In fact, he called a public hearing and presented them to us. And he said he would go along with that particular plan, but it wasn't his choice. His choice was, I believe, if I am not mistaken, was to just have a plurality vote city-wide. But we in the black community felt that the ward system would be better for us.

Q. What happened? A. Well, what happened -- well, he had the meeting, and he invited the other state representatives and the senator. And he also invited the city commissioners to come to look at his plan and hear his plan. But he said that the city commissioners refused to come, because they said it was in -- that the case was in court. But he felt that if they come and would listen to his plan and accept his plan, that the court case wouldn't



be necessary. And we agreed. We thought that it would save the city and the taxpayer money.

Q. What about Reverend Hill's campaign? What type of campaign did he have? What caused him to get the highest number of votes in the city? Did he have an active campaign? A. He had a fairly active campaign. He went to different groups and spoke at churches and maybe a few civic organizations. But by so many candidates running, I think that had something to do with it. I don't know exactly how many ran at that particular time, but I think by it being maybe three or four candidates running, I think maybe that helped to get the majority of the votes.

Q. Do you know whether or not he campaigned at all in white areas or whether he solicited white votes? A. Yes, I think he spoke to some civic groups. I am not for sure what the names are, but I am sure he did.

[12] Q. Do you recall the kind of support he got in the black community? A. Yes. He got good support in the black community. We had a lot of respect for Reverend Hill. In fact, when he left, it was real sad, because blacks respected him, and they went to him with their problems. He would be a spokesman for them.

Q. Was he active? A. He was very active.

Q. What were some of his activities? A. He participated in the NAACP, and I think he was on this black coordinating committee we

had, when we had the sit-ins and demonstrations here. He was very active and was very influential in helping the kids to settle down, so we could go and talk about different problems and work them out. So he was very active.

Q. Were you surprised when he lost? A. No.

Q. Why not? A. Because I didn't feel he could win under the present system. Not that I knew that much about it, but I just felt that he couldn't win with the number of whites in the community and with so few blacks.

Q. Were you ever optimistic though? A. That he could win?

Q. (Counsel nods head up and down.) [13] A. Sure, I was optimistic.

Q. When he won the plurality? A. Yeah. We were encouraged, yeah.

Q. But deep down inside you were surprised? You were not surprised when he lost? A. No.

Q. How would you describe his impact on the black community, and how would that impact compare with other blacks at the time or since? A. He was the spokesman in the black community when he was here. There is no doubt about it. He had a great impact among the youth in this community. You could go to him any time of night or day and talk to him, and he would listen to you, and he would go



with you, if there was a problem in the school with the school board and over to East Rome, West Rome High, anywhere. He was the spokesman. There is no doubt about it.

Q. Would he have been a good representative for the entire community? A. Yes.

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Q. What effect did his defeat have, if any, on the black community? A. I think it discouraged the blacks from even seeking election again, because they didn't feel that they could win under the system. It discouraged quite a few.

Q. Why did they feel that? Because he lost? [14] A. Yes. It kind of discouraged me. I had thought about running one time. Under the system I just didn't feel that I could win, so I didn't run.

Q. What if there was no requirement that you get fifty-one per cent of the votes? A. I probably would consider running.

Q. Are there other blacks who you have encouraged to run? A. Yes. We have talked to Mr. Aycock, Sims, Joe Wright, myself. Any number we have talked to.

Q. Why haven't these blacks run for office? A. They don't feel that they can get elected under the present system.

A. They don't feel that they can get elected under the present system.

Q. Is it expensive to run for office? A. I don't think it is that expensive. It might be, but I don't think so.

Q. Would it be time-consuming? A. Maybe time-consuming, yeah.

Q. Are those some of the reaons why they won't run or why you wouldn't run? A. Time-consuming?

Q. (Counsel nods head up and down.) A. No.

Q. What would be the reasons? A. I think the election laws, the way they are set up now, is probably the reason why they won't run.

[15] Q. What if there were no wards? Is there anything else that could be done to make it a little more encouraging for blacks? A. Well, I think the plurality system would be encouraging, but I still lean on the ward system.

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[17] Q. Have there ever been any blacks appointed to public office in Rome? A. One.

Q. Who? A. Elgin Carmichael.

Q. When was that? A. May be three years ago or two years ago, something like that, yeah.



Q. How did his appointment come about? A. Either some -- I think somebody resigned off of the board, and the school board appointed Elgin to the board.

Q. Was there ever any mention of filling the vacancy with a black person? A. Yeah. In fact, we talked with the chairman of the school board and --

Q. (Interposing) Who is "we?" A. Jerry Bryant.

A. Who is "we?" You said "we." [18] A. Joe Wright and myself. And I talked with Jerry personally also about it. And he said --

Q. (Interposing) Was Mr. Wright filling any capacity when he spoke with him, or were you both speaking on your own behalf or what? A. We were speaking on behalf of the NAACP and the black community, yeah, because we were on the educational committee at that time.

Q. What were you speaking about? A. We were asking him to fill the vacancy with a black, and they told us they would, and they asked for a name for a recommendation. We recommended a name to them, but they didn't accept the one that we recommended. They selected Elgin.

Q. Did they ever let you know that they were not going to select that person? A. No.

Q. They just selected who they did? A. Right. In fact, we didn't know who they were going to select until we heard it on the radio or in the newspaper.

Q. Have there been any similar vacancies on the city commission? A. Yes. I know of one in particular. I belive Commissioner Tolbert was killed in an accident, and there was a vacancy there.

Q. Were blacks considered for that vacancy? A. Not to my knowledge, no.

[19] Q. Mr. Carmichael has been on the school board a couple of years? A. Right.

Q. Is he well-known in the city? A. Yes.

Q. If he ran for the same office or the same seat that he presently holds, would he run into the same problems that you stated most blacks would? A. I think so.

Q. Why? A. I just don't feel like the white community would give him that kind of support to elect him.

Q. Even though he has been tried and tested? A. He hasn't been tried and tested. He was appointed.

Q. What if there was no majority vote requirement? Do you think he would have a problem getting elected? A. I think he would have a better chance.



Q. But he couldn't get fifty-one per cent of the city's votes? A. I don't think so.

Q. Is there any black in Rome who you think could do that? A. No.

Q. Is there any black in Rome who you think could qualify or could get a plurality? A. Yes, I think so.

Q. Do you think you could? A. Sure, I have confidence, yeah. I believe I could.

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[21] Q. Would you say that the present school board and city commission respond to the average black citizen in Rome? I'm not speaking of you; I am speaking of the average citizen who is black. A. No.

Q. Why do you say that? A. Well, if you will go into our communities and look at the areas where some of them live, the streets, the housing. You will see housing projects, which I whole-heartedly disagree with. You can tell that they don't get the same kind of attention that the poeple in the white community get.

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Cross-Examination

By Mr. Brinson:

[36] Q. Mr. Wright, you have listed a number of black candidates that you were

aware of that had run in Rome before -- A. (Interposing) Right.

Q. -- over those past several years?

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Re-Direct Examination

By Ms. Jones:

[51] Q. When the black community endorses white candidates, what are they trying to accomplish? Why is that done? A. Well, we are trying to get representation in the black community, trying to -- we feel that the one that will represent us and not be afraid to speak out in our behalf in the black community -- you will find that in the sourthern states, at least particularly in this area, some white candidates are afraid to speak out on behalf of the black community. We talked to them. When we talked to the county commissioners when they were running, we asked them if they would be willing to hire some blacks over in the courthouse and the annex and maybe hire some more at the county -- on the police department or sheriff's department, and they agreed. I don't say they all have lived up to what they have said, but at least they made the promise, when they were confronted, so that's why we --

Q. Often the black community endorses persons who say they are willing to represent the black community. A. Right.

Q. Do they always live up to what they say? A. No.



[52] Q. How many times -- would you say it was more often they don't or usually they do? Could you put a numerical -- nine times out of ten that they live up to it? A. I would say a fifty/fifty chance.

Q. Are there often people in the black community who would better represent the blacks, but who are not running, who choose not to run? A. Yes.

Q. (By Ms. Jones) Mr. Wright, you stated that when blacks [53] endorse white candidates, there would be somebody in the black community who you feel would be a better representative, who might be black but who happens not to be running. A. Yes.

Q. Why do black candidates endorse white candidates? A. Why do black candidates?

Q. I mean why do blacks in the community -- I'm sorry -- A. (Interposing) Uh-huh.

Q. -- endorse these white candidates, if they are not certain that these candidates will live up to being adequate representatives of the black community? A. Well, we don't feel that a black can win under the present system, so we have to go with somebody that we feel will be representative to the black community. And we just don't feel that a black can win under the present system. I know I wouldn't run under the present system.

Q. Would you run if the system changed in any way? A. Most likely, yes.

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Deposition of Curtis Moreland

Direct Examination

By Ms. Jones:

[3] Q. Would you state your age? A. Fifty-three.

Q. What is your race, Mr. Moreland? A. Black. Negroid.

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[5] Q. Have you ever done any research on any matters that involve the black community in Rome? A. Research in what area? In educational or job --

Q. (Interposing) Voting. [6] A. Oh, yes. Well, sometime ago we had a concert effort in soliciting, aiding, coercing blacks to vote, that type of thing, on I know at least two occasions.

Q. Have you had the opportunity to observe the political participation of blacks in Rome over the years -- A. (Interposing) Yes.

Q. -- that you have been here? A. Yes, I have.

Q. How would you describe that activity on the part of the blacks? Do they run for office? Do they register in large numbers? Do they vote? Are they as active as



the white community? A. Through our efforts of trying to get them to register to vote, I think that -- again -- I am almost sure that they vote. We have had in the past through, again, great efforts competent personnel to run for office with no success.

Q. Would you describe the participation generally slight, or are blacks active politically? A. No, inactive.

Q. What about the young community? A. It is hardened. The blacks of this community have no faith in the political process here in the City of Rome.

Q. Why is that? A. They are fighting a losing battle. This is in my conversation with them. And I have quite a bit of conversations [7] with them through youth activities and this type of thing. There is no panacea. There is no guiding light. There is no one that they can point to with a finger of success.

Q. Does the system as you understand it to be as it presently exists pose any problems at all for blacks in electing persons of their choice to public office? A. It's a big problem. First of all, if we look at the composition of the City of Rome, I would dare say that the population of this city is somewhere around twenty-three, [8] twenty-five per cent black. And to win -- you could not win with that amount. You see, whites do not vote black in the City of Rome.

Q. Why not? A. This is historical. I don't know why. We have had --we have got

a number of competent black people, but -- I really can't answer you in terms of why they will not, but whites will not vote blacks. And it has been demonstrated through the years.

Q. Is it because of attitudes, or what do you base your opinion on? A. Oh, I imagine it is a matter of education. I don't know the reason. They will have to give that reason. But it has been demonstrated in the past that it will just not occur. Now again, you have some whites that will. But in order to get that simple majority, there's not enough whites that feel that way.

Q. So in other words, do you feel blacks can ever elect a candidate of their choice under the present system? A. Whenever the attitude changes where whites will vote black -- and I do not foresee that -- yes.

Q. What if there was no majority vote requirement? A. Our possibilities of winning would be a little better, because, you see, wherever there is a number of candidates running for any given office, there is a dilution of votes. If the percentages of those candidates be white, then it dilutes their vote to the extent that the black candidate stands a [9] chance.

Q. You mean they split their votes -- A. (Interposing) They split their votes.

Q. -- among the white candidates? A. Yes.

Q. So in that case a black would not be required to get fifty-one per cent? A. Well, in a primary, no. But in the run-off --



Q. (Interposing) I am saying if there was no majority vote requirement. A. Yes. Where there is no requirement of a simple majority, the possibilities -- this isn't guaranteed. But the possibilities would be better.

Q. Have there ever been any blacks who have run for public office in Rome? A. There has been -- I know of three, one a Democrat, and two Republicans. Can I elaborate here just a moment?

Q. Sure. A. First of all, if he is a Republican and black, he has got two strikes against him, because there are very few black Republicans. And I would dare say there are fewer white Republicans in this area. So if he is going to run on the Republican ticket, he has lost at the outset. The other -- let me give you an example: Some years ago we had a candidate come to run for a member of the board of education and gave a very good showing. His name was Hill. And in fact, he ran a good race and won it, and there was a run-off of two very fine candidates, Doctor Hoyt and Reverend Hill, both fine candidates. Hill, if my memory serves me correctly, gained the majority of votes, but was yet not a simple majority. Then in the run-off --

Q. (Interposing) By majority you mean he got the most -- A. (Interposing) He got the most votes, but not fifty-one per cent of the votes cast. And then there was a run-off. This makes me sure that a black could not win, because in the run-off he was whipped mercifully.

Q. Why is that? What do you think his reasons for defeat were? A. Whites will not vote for blacks. It's as simple as that. They just will not vote for blacks. Now they did vote for him in the -- there were some that voted for him in the initial race. But when it came down to white versus black, then the true picture came to light.

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Q. Would you tell us a bit about Reverend Hill's campaign? Did he campaign in the black areas or white areas? A. He was a very viable candidate, a young man, knowledgeable man, a man that solidified the political picture of blacks in this community, a man that was not considered radical in nature, a man that was considered by whites as a fine young man. He was just the thing at the time. He represented the community, not [11] black or white. He was that type of man that could unify, solve problems of a civic nature, that type of thing. He did do a lot of campaigning, not only in black neighborhoods, but in white. He stirred up the young people to the extent that they went to vote. Not only did they go to vote; they folded letters, and they carried banners, and they did things like this.

[12] Q. Were you surprised when Reverend Hill lost the election? A. Terribly so. His showing in the initial running gave vent to hope, unfulfilled dreams. It was just the thing that we needed, really.

Q. So did his defeat have any effect at all on the black community? A. It killed a political dream of the peopie, really. It re-



turned us back to an age that I just don't like for us to have to recall.

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[13] Q. Is there anything that would encourage blacks to become as politically active as they were, apparently, at that time? A. You are asking for my -- the way I think?

Q. Yes, sir. A. All right. There are two possibilities. First of all, if we do away with the simple majority, that will not guarantee it. In fact, there is nothing that is going to guarantee it. But that would be the simply way, to remove where we will have to have a simple majority and run-offs and things like that.

[17] Q. Have any blacks ever been appointed to public office in Rome? A. Not -- yes, Elgin Carmichael to the board of education.

Q. When was he appointed; do you recall? A. I think Elgin has been on the board now for about three years. I think that is the case.

Q. If he ran for office for the same seat that he has on the school board, would he encounter the same problems that you state most blacks would? A. Elgin would suffer the same consequences. And I think if you would ask him, he would be the first to admit it. He served well on the board of education. He is well-liked by his co-workers on the board of education. He is well-known in this city, a competent young man. But he would suffer the same defeat as any black candidate would.

Q. And what is that? A. He would suffer defeat using the methods that we now employ, and that is the method of a simple majority is the winner -- requiring a simple majority.

Q. Why would he not be able to get a majority A. Whites will not vote blacks. It's as simple as that. Whites will not vote blacks.

Cross-Examination

By Mr. Brinson:

[25] Q. Okay. All right, sir. Now you have made the statement that whites will not vote black. A. This is true.

Q. All right. Now what are the facts upon which you base -- that is your opinion, obviously? A. Yes, sir.

Q. What are the facts on which you base that opinion? [26] A. Because of the way demonstrated in the past. We have never been able to mount a campaign successfully in a black candidate.

[47] A. In an at-large situation as exists in the City of Rome, does a black candidate who has any hope of success need to campaign for white votes. A. He needs to; he has got to; he must have. But he -- once again, it's a losing battle. Whether he campaigns or not, it's a losing battle.

Re-Direct Examination



By Ms. Jones:

[51] Q. You also stated that whites won't vote for blacks, and you based that largely on Reverend Hill's election. A. Uh-huh.

Q. Are there any experiences in your past or in living in Rome on which you also base that? A. That whites will not vote for blacks?

Q. In other words, as a black living in the Rome community, would you have reason to base your opinion on other things, that whites won't vote for blacks? A. I am a little --

Q. (Interposing) Such as when you went to buy your house, and you -- A. (Interposing) Okay. That's not a voting situation, no.

[52] MR. BRINSON: I object to that as leading.

Q. (By Ms. Jones) I am not speaking of voting situations. I am speaking of situations as a resident of Rome. A. In other words --

Q. (Interposing) Just in general. A. All right. Are you speaking in terms of are there those who would discriminate against me because of my color?

Q. Yes. A. Oh, sure, that's true.

Q. We discussed Reverend Hill quite a bit. Would you tell us what impact, if any, he had on the black community and how that impact compared with any other black who had been in Rome in recent years? A. Rome, from my observation, was not a very viable politically conscious area for blacks, and I am speaking from the time I was here. And I imagine that that feeling had to be nurtured with time. It wasn't one that spun overnight. With the coming of Hill -- I don't know what magic he had, whether it was the manner in which he presented himself or whether it was the radiance that glowed from him as an individual, but he was able to bring together not only black folks, but white folks. But the need was more felt in black communities where the apathy existed. He had no reason as a black man to seek, want, and cuddle political structures until Hill told him -- not only told him, but showed him that you can move mountains with a ballot. [53] And he gained a new insight -- the black man did -- a new insight in his place in this town. There were, at the same time, radical fringes that could have pulled them that way, but they didn't. It was through Reverend Hill that -- he even brought these people together.

Q. Okay. You also mentioned some blacks who you deemed qualified, and you suggested they run for office. Would you state for us why they haven't run? A. My opinion?

Q. Uh-huh. A. My opinion is that --

Q. (Interposing) Including yourself. You stated that you have thought of running. A. Yeah, I -- you know, if the



urge hit me hard enough, it would not be for a local office, because my chances are virtually null under the present system.

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Deposition of E. J. Thomas, Jr.

Direct Examination

By Ms. Jones:

[2] WHEREUPON, E. J. THOMAS, JR., after having first been duly sworn, testitied as follows:

Direct Examination

By Ms. Jones:

Q. Would you state your full name for the record, please? A. My name is Edgar James Thomas, Jr.

Q. What is your present address, Mr. Thomas? A. 5 Pine Street, Rome, Georgia.

Q. What is your age? A. Twenty-eight.

Q. What is your race? A. Black.

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[4] Q. Have you ever given any thought about running for a public office in Rome? A. Yes, I gave it thought -- not real serious thought, but I have thought about it.

Q. You, in other words, have had some political inclination? A. Right.

Q. Are you familiar with the present election system in Rome? A. Yes, I am.

Q. For the school board and the commission? A. Yes.

Q. What office have you thought of running for? A. Well, at once I thought about running for commissioner, when I was living out in West Rome. I thought about it.

Q. Not seriously? A. Well, I didn't go through no type of -- you know, I didn't go through anything trying to -- I just thought about it. I thought of my chances, and I sort of dismissed it after a while.

Q. And did you know, at the time that you thought about public office, what would be required of you, if you ran, or the methods that you would run under? A. Yes, I was familiar, yes.

[5] Q. What was it? A. Well, I would have to get at least fifty-one per cent of the votes in order to win. I knew that the post would be voted on city-wide.

Q. And you said you dismissed the thought because of your chances? A. Yes. I didn't really feel that I could get fifty-one per cent of the votes. I just dismissed it.

Q. Did it have anything to do with your inexperience or lack of exposure to the political system that you didn't feel you could



get the votes? A. No, it wasn't that. I felt that due to the majority here in Rome, since blacks only make up about twenty-five per cent, and that I knew I would have to have at least all of that plus at least -- what -- twenty-

six, twenty-seven per cent of the white vote in order to win, well, I didn't think that I could -- I didn't think that I could get that much --that many votes.

Q. If you were not required to get fifty-one per cent of the votes, would that have had any effect on your decision whether or not to run -- your ideas about running? A. Possibly so. Possibly so. If I felt that I had an even chance, then maybe at the time I would have possibly tried to win the -- run.

Q. Of course, you realize that you would have to wage a good campaign and get as much support as possible? [6] A. This is true.

Q. Are there any other blacks in the Rome community, particularly young blacks, who might feel the way you do? A. I'm sure there are quite a few. I am quite sure.

Q. In your experiences in the black community in Rome, have you had a chance to observe the political participation of the young blacks, of which you make up a member? A. Yes, I have. I think there has really been a lack of interest toward our election system here in Rome with the younger blacks, because I guess they feel more or less like I do, that if the candidate that they actually -- if they want a candidate of their choice, then they alone

could not put him in office. So it's really just a lack of interest.

Q. Has that shown or been indicated in the level of participation and registration and actual voting and running?

MR. BRINSON: I object to that as leading.

Q. (By Ms. Jones) You may answer the question. A. I would think so.

Q. In what way? A. Well, as I was saying earlier, no one likes to do anything, unless they feel that they have a chance. And a lot of times if you will spend a lot of energy and effort and time, then you do want to feel that you have a chance, you know. And due to our present system, I think that most blacks feel as I do, that we really don't have an equal chance because of the fifty-one [7] per cent majority.

Q. By "equal" you mean equal to, say, a young white man with your experience and your notoriety? A. Precisely.

Q. Would have an advantage because of the system? A. Well, yes, I think that he would have, simple because the whites do make up about three-quarters of the population here in Rome and would make it much, much, much more easier for him.

MR. BRINSON: Just for the record, I want to object to that last question and response as having been a leading question.



Q. (By Ms. Jones) Has there ever been a time in Rome when the young blacks have been politically active? A. Yes. I recall -- well, the only election that I can recall that there was real good participation among the blacks was when Reverend Hill ran for the board of education.

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[8] Q. Could you tell us a bit about Reverend Hill's campaign? Did he win? Did he make a good showing? A. Yes, he made a good showing. He had to go into a run-off, because he did get the majority of the votes the first time around.

Q. "Majority" meaning what? A. Well, he got the most votes between all the candidates that were running. But when it came down to -- because of the law of the fifty-one per cent majority, it went into a run-off, and it was him against one other candidate, and he lost. He lost bad.

Q. Why do you think he lost? What was the reason for his defeat, if he had won in the initial election and turned around and lost in the run-off? A. Well, I think he lost because people here in Rome do tend to vote toward racial lines. And since it was a white candidate and a black candidate running, I think that the white community came out and voted. And by them being a majority, even though the blacks did come out again in the run-off and voted, it was just not enought. We were too small in number.

Q. Do all whites, do you think, vote on racial lines and all blacks vote on racial lines? A. No, I don't think so.

Q. Why? A. Well, when you say "all," that means everybody. I don't [9] think that everybody would vote for a candidate simply because he is black or white or whatever. But I do think in a majority -- when it comes down to a black candidate and a white candidate, both of them have equal qualifications, then I think that majority, regardless of the qualifications -- I think the majority of the white will vote for the white, and the majority of the blacks are going to vote for the black candidate.

Q. With Reverend Hill, were your surprised when he lost in the run-off? A. No, I wasn't surprised.

Q. Why not? A. Well, just because the people that he was representing or the blacks here in the community, as I said, are such a minority that it just wasn't enough numbers to -- I didn't think that he had a chance, to be honest, in the run-off.

Q. Do you know if he got any white votes in the first election? A. I don't know.

Q. Would he have lost if there had been no requirement to get fifty-one per cent of the votes? A. You mean --

Q. (Interposing) When he ran -- A. (Interposing) In the first --



Q. (Interposing) Yes. A. No, he would have won, according to the first election, [10] when they first ran, than if it wasn't a requirement for fifty-one per cent of the votes. Then he would have won the seat.

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[11] Q. Did his defeat have any effect at all on the black community's ability to elect someone or their political participation in Rome? A. Yes. I am afraid it did. Well, seemingly, after the run-off and after he lost, people once again went back to saying that, you know, there is no way; there is no chance, because the black community did work real hard in that election even though it was -- you know, they worked real hard. And I imagine a lot of people that had never voted before voted in that election.

Q. Does that go for young blacks as well? A. Yes. Yes, young and old and middle-aged.

Q. Did it in any way discourage you? A. Well, I am afraid it did. Well, once again, it just showed that when it come to the numbers and with the present system that we do have, a requirement of fifty-one per cent of the votes, then this would be discouraging to me. It was [12] discouraging to me and to anyone else that is black or a minority in this community, because it is just impossible to go -- you can't beat numbers, you know. You can't beat them.

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Deposition of John Houser

Direct Examination

By Ms. Jones:

[2] WHEREUPON, JOHN W. HOUSER, JR., after having first been duly sworn, testified as follows:

Direct Examination

By Ms. Jones:

Q. Would you state your full name for the record? A. Dr. John W. Houser, Jr.

Q. What is your present address? A. 1006 E. First Street, Rome, Georgia.

Q. How old are you, Doctor Houser? A. Fifty-eight in July.

Q. What is your race? A. Negro.

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[4] Q. Have you ever sought to be elected to a public office? A. Yeah. I ran for the board of education one year and I don't recall what year it was.

Q. Can you approximate how many years ago it was? Was it the sixties--late fifties? A. Probably the early sixties or late fifties.



Q. Did you win? A. No, I lost.

Q. Who were your opponents? A. The incumbent board was the only people running that I knew, there were no other black people running, but me, but as far as I know it was just the original, not the original, but the board members at the present time was running and me.

Cross Examination

By Mr. Brinson:

[10] Q. Did you, Doctor Houser, just run one time? A. Yes.

Q. And that was before 1965? A. I'm sure it was, I don't recall the year, but I'm sure it was before 1965.

Q. What members of the black community encouraged you to run? A. Several civic organizations at that time. There was an organization, it was some group or clubs that were encouraging me plus some of the black leading citizens.

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Direct Examination

By Mr. Brinson:

[20] Q. Do you know whether or not--you remember that Reverend Hill [21] was defeated? A. Yes.

Q. Do you know whether or not that defeat had any particular effect on the black community? A. I don't know, when you are defeated each time, you know it always makes you feel like its an impossibility because, let's see, Whatley ran, I ran, Reverend Hill ran, I guess we are the only three blacks that really ran and each time we were defeated and I don't know how long Carmichael has been on the board of education but he has been appointed to the board of education and it would certainly be that you wouldn't know whether you could win an election or not since we haven't.

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Deposition of Napoleon Fielder

Direct Examination

By Ms. Jones:

[15] Q. So if the black community put up a candidate, and the candidate happened to be black, could they vote that person in office with the fifty-one per cent requirement. A. If he was in a -- if it was a district voting, tyes.

Q. What if it is city-wide? A. No.

Q. Why not? A. Well, as I said, you have got the majority white.

Q. Won't they vote for blacks? A. Some will.

Q. How many? A. I couldn't say that, but I mean the majority would automatically --I mean you are asking me for my opinion.



Q. Right. A. This is the only way I can answer, that from the past this is what happens.

Q. Tell me why you say "in the past." What happened in the past? [16] A. Well, I'm talking about history, you know, on up say the '50s and the '40s and the '60s and the '70s. I mean, you know, sequence and the way things has gone.

Q. What if a black candidate wasn't required to get fifty-one per cent of the votes, but just required to get the highest number of votes? A. If he was running in a district, and if it was populated in the -- yeah, he would stand a better chance.

Q. What if he wasn't running from a district, but was running at-large and was required only to get the highest number of votes? A. Do I think he could win?

Q. Yes. A. Yes.

Q. What if he was required to get fifty-one per cent of the votes? A. For the district?

Q. No. A. City?

Q. Right. A. No.

Q. Why not? A. Well, just what I said, that the majority rules.

[21] Q. If Reverend Hill had not been required to get fifty-one per cent of the votes, what would have happened? A. Well, I think he would have won in the primary.

Q. Even though he ran against Doctor Hoyt? A. Yes. Because, see, the more people that is in a race, the more the votes is split up.

Q. And what happened when they went to the run-off? A. Well, everybody just -- the other four candidates, they -- it seems like their votes went to Doctor Hoyt, and that's where it was -- you know, in the election, and not somebody took them out of the machine and put them over there, that it was they actually voted for her.

Q. Did Reverend Hill's defeat have any effect at all on the black community as far as their aspirations for electing a representative to the school board is concerned? A. Some it did, yes. Yes, it did have -- well, they felt that regardless to what happens, you are not going to win, you know.

[24] Q. If they ran, would they have any problems getting elected under the present system, say like if Mr. Aycock ran? A. Yes. I just don't feel like -- now all I can say is an opinion. This is my opinion. I just don't feel like that a [25] black could get elected under the present system.

[26] Q. Have blacks been able to elect someone to represent them? A. Not in the past.



Cross Examination

By Mr. Brinson:

[50] Q. Well, do you think that if blacks are elected to the city commission that they should represent and look after just blacks? A. No.

Q. They should look after everybody? A. Everybody.

Q. Do you think the whites elected to the city commission ought to look after just whites? A. No. Look after the whole city. But, you see, here's the thing about it: You can -- a black can better represent blacks than a white can, because he can understand. I mean he -- I mean there is a communication.

[60] Q. And how many times has a black that was a good candidate and a qualified candidate buckled up his belt and run in this city? A. Well, we haven't had but one. And as I said, they feel like that they couldn't win.

Re-Direct Examination

By Ms. Jones:

[64] Q. What I am asking--you gave us an examples of -- if you were a member of a church, you would represent that church, and Mr. Brinson would represent another church, and then both churches would have representation. And then you went on to say that blacks, in order to have representation, might need someone who would understand and be able to communicate. Do you think that blacks

presently have that on the city commission in the form of representation, someone who can communicate and understand the black community? A. Let me say this: This is my conviction. This is my conviction, that the blacks and whites still don't have real communication. This is my -- I mean -- period -- because there is still suspicious, you know. If a white person come into my community, I mean, "What is he doing here?" If a black person goes into a white community, "What is he doing here?" You follow me? So you ain't go that trust. You ain't got that real relation.

Q. Do you have that on the city commission? Does the black community have that? A. No, because there is no black on there. They do the [65] best -- let me say this: I am not saying they are not doing the best they can. But then it's a lack of communication.

Q. Are there persons in the community who might better represent you but are not elected or have not been able to get elected? A. Are there blacks --

Q. (Interposing) You are saying the whites that are on the city commission do the best they can. Are there blacks or others who might do better or who might go one step further and have the communication you say the black community needs? A. Maybe I am anticipating what you are saying or am not really following. Are you asking me is there a particular person in the community, or are you saying --



Q. (Interposing) In general. A. -- would blacks --

Q. (Interposing) In general. A. In general. That could represent the black community?

Q. Better. A. Better. Yes, it is.

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Deposition of Reverend Clyde Hill

Direct Examination

By Ms. Jones:

[2] WHEREUPON, REV. CLYDE HILL, after having first been duly sworn, testified as follows:

Direct Examination

By Ms. Jones:

Q. State your full name, please. A. Clyde Hill, Sr.

Q. What is your present address, sir? A. My present address is 1002 Turpin Street, Augusta, Georgia, 30901.

Q. What is your age? A. I am thirty-three.

Q. What is your race? A. Negro, black.

[9] Q. As head of the black coordinating committee, were you ever asked to present the views of the black community or to speak on behalf of the black community in Rome on any given matters? A. What do you mean? The overall populous?

Q. Blacks. Did they ask you to represent them on certain matters, or did whites seek out your opinions about problems in the black community? A. Yes.

[23] Q. Had there ever been a black person in the City of Rome who had ever won any election before? A. Not to my knowledge. Not to my knowledge. And that's what I said what I said a while ago. I could -- you know, you can listen, you can understand, and you can also intantalize (sic) and feel certain things go in the people's minds and hearts, like I say. A lot of people felt helpless and hopeless as far as a black winning in any position because of certain things like, you know, like in my case, the fifty-one percent, you know, majority. And so rather than try and fail, a lot of them just wouldn't try.

Q. You say people felt a black couldn't win; are you speaking of people in general or people in the black community? [24] A. Well, I am speaking now basically in the black community, you know, about the black, you know, didn't stand a chance.

[25] Q. I didn't mean overt statements. Was there anything in your experience living in Rome that would cause you to believe



race was ever a factor in your having lost in a run-off after having won in the general election. [26] A. I think I might have insinuated that that could have been a possibility when I said a while ago that -- I don't know; I will be speculating -- but the votes could have been shifted. You know, you are doing it down now to two people. I did wonder once why would -- since there was such a need -- why would we have -- what was the purpose or motive for three candidates coming in, you know, over against, you know, but I remained -- we got through that. But I wondered why we had three candidates coming in at that particular time and, you know, one black was in it. I did wonder whether or not there was any coming together to shift votes or interest, you know, to one to --

Q. (Interposing) To a run-off? A. Yeah. I didn't know, you know but you think of these things. You wonder and speculate when you have done so well in the primary and then, you know, altogether different in the run-off.

[30] Q. Did you find that your defeat had any effect at all on the black community's ability to elect a person of their choice to office in light of the fifty-one per cent requirement? A. Oh, yes, yes, As a matter of fact Scott and I talked about that. He was my campaign manager. And we realized that it was definitely a hard uphill journey. And he felt like that if you didn't win, the way the people felt about you, there was no chance for a black to get elected with a fifty-one per cent majority. So I think that was somewhat the feelings of others who knew what was required and all,

you know. I mean that was the general feeling at that particular time.

Q. What about young blacks? In the years that you were here, afterwards, did they continue to be as enthusiastic about [31] registering and turning out to vote? A. No. I think a high degree of complacency and lethargy set in.

Q. And what? A. Complacency and lethargy set in after I lost, because like I said about the older ones who felt like if he did that well and didn't get it, you know, what's the use? Who can? That was the general thought. And the young people shared the same. And plus -- now there were some few who were whites who suggested that -- you know, try again. But my concern was not to become a political figure but to become a representative of all the people.

Q. Would you have considered if there had been -- if the fifty-one per cent requirement had been done away with, and you ran at-large, top vote-getter was elected? A. Would I what?

Q. Would you have considered running again after being encouraged by some whites? A. You mean if the fifty-one per cent --

Q. (Interposing) Was dispensed with. A. Yes, I think I would have, especially -- yeah, I think I would have. I wouldn't have wanted to have gone through all of that under the same, you know, setup, but I would have --



Q. (Interposing) Do you think it would have been a bit easier and fairer? [32] A. Sure.

CROSS EXAMINATION

By Mr. Brinson:

[34] Q. Do you think if you had stayed in Rome and continued to work as you did in the community that you might have considered running again and trying that uphill battle? A. If and only if the fifty-one per cent thing had not been there.

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Deposition of Elgin Carmichael

DIRECT EXAMINATION

By Ms. Jones:

[2] WHEREUPON, ELGIN CARMICHAEL, after having first been duly sworn, testified as follows:

DIRECT EXAMINATION: By Ms. Jones

Q. State your full name, please. A. Elgin Carmichael.

Q. What is your present address, Mr. Carmichael? A. 604 Brown Street, Rome, Georgia.

Q. How old are you? A. Fifty-one.

Q. What is your race? A. Negro.

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[7] Q. Have you ever been appointed to any public office? A. Yes. I am presently a member of the Rome City School Board.

Q. When were you appointed to that position? A. Oh, it has been two and a half years ago.

Q. How did that appointment come about? Was there a vacancy on the board? A. Yes. There were two appointments at the same time. Two of the previous members resigned, and I was asked would I accept appointment on it.

Q. Are there presently any other blacks on the school board? [8] A. No.

Q. Have there ever been any blacks on the school board? A. No.

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[10] Q. How would you describe black political participation in Rome? Are blacks politically active in Rome? A. Yes, blacks are active in Rome, but I think there's room for a lot of more activities, politically, by blacks. I think that participation in the overall running of the government -- but I think that blacks are somewhat apathied because of, you know, they are outnumbered seven to one anyway.



Q. Are you talking about in terms of running for office, voting, or registering? A. Right. Right. They feel that, "What's the use of running?" The chances of winning is very -- almost nill.

Q. What would be necessary for a candidate to win in Rome? What is the present system like? A. Well, the system now in the City of Rome is a city-wide election. You run for different posts, and you have to have a fifty-one per cent majority.

Q. Of the total votes? A. Right.

Q. Is that what you were referring to when you said blacks [11] feel that it is unuseful to campaign? A. Well, that's definitely what I was referring to. I think in the past we had Reverend Clyde Hill who ran for the education -- board of education. And he polled -- he was the high man out of five, I believe, if that's correct, if I can remember correctly.

Q. By "high" man, what do you mean by that? A. He had the largest number of votes. But because of the fact he didn't have a fifty-one per cent majority, it threw him in a run-off with the highest or the next of the remainder, and she was a white person, and he lost.

Q. Would that seem irregular to you or to the people in the black community, the fact that he lost? A. Definitely it is irregular. It says that there is not a chance to win.

Q. Why? A. The ratio. People -- let's face it, both blacks and whites vote down racial lines. It has been proven. I think that because of that -- well, he won in the first round, and he was high man. So when they pitted him against another white over here by himself, then the supporters of the other five evidently -- it is obvious that they voted for the white rather than he. And I am sure he must have gotten some white votes to get high man in that election.

[13] Q. Do you know if there are presently any blacks in the Rome community who could get fifty-one per cent of the votes? A. No. I guess that I'm about as popular a black as there is in the community.

Q. Why do you say that? A. Well, my association down through the years has been with [14] -- I would say with the exception of going to school, has been more with whites than blacks because of my job.

Q. What job is that? A. The one I had at the Elks Club and even the one I have now. I come in contact with them. But even with my popularity, I am somewhat in a dilemma as to whether a black can win or not and get fifty-one per cent.

Q. Why? A. Because -- well, let's face it -- and again I repeat that we vote along racial lines.

Q. How do you know that? A. It's obvious. Reverend Clyde Hill confirmed that, you know, when he was high man in the election with five people. And then he was pitted



against another white over here and boom! What happened? He lost.

[15] Q. Even though you are very well-known among whites, both socially and professionally? A. I just don't think that there is no way that I could get elected. I do believe that if we had the system -- if the system was working as to where if I was running against five people, and the five were white, and I was the sixth one, and i was black -- if the five would split the votes up to a point, I think with my popularity, I might could win, if five would split [16] the votes up.

Q. Fifty-one per cent majority? A. No, not with the fifty-one per cent majority. Without that.

Q. You mean top vote? A. Yeah, top vote, high man. I think those five probably would split the votes up. I think I probably would have a chance. But under the system with the fifty-one per cent majority, it won't work.

Q. Why not? A. Because I would have to run against the highest out of the five. And if they are white, because of the racial lines voting, I just wouldn't have a chance.

CROSS EXAMINATION

By Mr. Brinson:

[24] Q. How do you know then that people vote along racial lines? A. Well, it's obvious from the aftermath.

Q. Now you have said it is obvious several times, and I just want to know on what facts you base that. A. On what facts I base it on?

Q. (Counsel nods head up and down.) [25] A. Well, I think -- go back to Reverend Clyde Hill incident. I think that is one specific point. He was high man of the five, and that was because the other four were splitting the votes up among the whites. And then when he was pitted in the run-off with just a white, then he lost.

Q. So that one incident right there makes you think that racial block voting exists in the City of Rome? A. That's the one that comes to my mind right now. I am sure there are others.

RE-DIRECT EXAMINATION

By Ms. Jones:

[45] Q. (By Ms. Jones) Did you not testify that prejudice exists in Rome which causes people, black and white, to vote along racial lines? [46] A. Right.

Q. Did you not say that this prejudice may exist for some time to come? A. Yes.

Q. Based on that, is there anything that could be done that would alleviate the effect that this prejudice has on the voting system in Rome? A. Is there anything can be done?



Q. (Counsel nods head up and down.) A. In the way of --

Q. (Interposing) The election system. A. -- the election system? I think the majority system doesn't give the black man a chance to win. Now I am not that familiar on drawing up an election system. I don't have that much knowledge about it to say what can be done. But it would appear to me from the knowledge I do have that a system whereby high man wins would be a more favorable system, as far as the blacks getting a chance to get elected is concerned.

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Deposition of James Loewen

DIRECT EXAMINATION

By Mr. McGrath:

[3] Q. Could you state your name, please? A. James W. Loewen.

Q. Mr. Loewen, what is your present address? A. 46 Central Avenue, South Burlington, Vermont.

Q. Are you presently employed? A. Yes; I am employed as Associate Professor of Sociology by the University of Vermont.

Q. Could you describe to us your educational background? A. I have a B.A. degree in sociology from Carleton College in Minnesota. That included some undergraduate

work at Mississippi State University. I have a M.A. degree and a Ph.D. degree in sociology from Harvard University.

Q. Dr. Loewen, do you have any background in statistics? A. Yes. I have had a course in statistics and a course in research methods in my undergraduate education. I have had a course in statistics, a course in advanced quantitative methods and other course work in research methods as part of [4] my graduate education. I also used statistical methods during my doctoral dissertation research and in later researches since that time.

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[6] Q. Dr. Loewen, at my request did you attempt to determine whether or not racial block voting existed in Floyd County [7] and/or the city of Rome? A. Yes, I did.

Q. Could you describe to us precisely what you did in an effort to make that determination? A. First of all, you and I discussed --

MR. BRINSON: Excuse me just a minute. I am going to object to that previous question on the grounds that it is a compound question and the answer therefore is not clear. And just by way of edification, of course, my objection is you said Floyd County and or the City of Rome. I don't know whether it is both or which that he has done.

THE WITNESS: You and I discussed the recent elections, let's say in the last ten years,



that have occurred in Rome and in Floyd County. I explained to you the conditions that would have to be met in order to do a scholarly analysis of whether or not racial block voting occurred.

You supplied me with what you represented to be population totally by race for every precinct or voting district, electoral district, in Floyd County, including four that were in, or primarily in, four or five, the town of Rome.

You also supplied me with the vote totals for the 1968 Democratic primary election for United States Senator in which Herman Talmadge, the White candidate, opposed Maynard Jackson, [8] Black candidate, for the Democratic nomination.

To my knowledge, as represented to me by you, this was the only election in which the following characteristics occurred: First, a Black and a White candidate, or candidates, opposed each other; and, second, a number of voting districts were involved, not just one voting district or three or four voting districts; and, finally, neither of the candidates was trivial, or the election was not trivial. In other words, a reasonable number of votes was cast.

I then analyzed these two pieces of information that you had given me.

BY MR. MCGRATH:

Q. Before we go on, Dr. Loewen, let me hand to you two documents and ask if you can

identify them. A. Yes. The first is the population totals for the total population and for the Black population for each of the voting districts or precincts in Floyd County. These were the population totals that I used in computing the independent variable which I used to be percent White in the population by precinct. These totals are, of course, total and Black, and I did an elementary subtraction to obtain the White population and then the percent White.

The second document is the results by precinct for [9] Jackson and Talmadge in the primary election just discussed, and again I did simple arithmetic to determine the percentage of the vote in each precinct that went for Talmadge, the White candidate.

MR. MCGRATH: I would like to have those documents marked respectively Loewen Exhibits for identification 2 and 3.

(Loewen Exhibit No. 2 and Loewen Exhibit No. 3 were marked for identification.)

BY MR. MCGRATH:

Q. Dr. Loewen, what, if any, statistical analysis did you subject this material to? A. I subjected these data to three forms of statistical analysis. First, I looked to see if there was a relationship between the precincts that had heavy White percentages in the population and the precincts that came out with a heavy White candidate vote total. The statistic that I used is the standard statistic that any or



almost any social statistician would begin with: It is called the Pearson product moment correlation coefficient or "r," small "r." I believe it is the most commonly used single measure of association between two variables, and I wish to compute it to find out if there [10] was an association between those two variables. Should I describe what "r" is?

Q. Please. A. "r" can vary from minus 1 through 0 to plus 1. If "r" equals plus 1, that would indicate a perfect positive relationship between the two variables, in this case between the variables percent White in the population and percent of the vote for Talmadge, the White candidate.

A perfect positive relationship, or "r" equals 1.10 would means, then, that if one knew the first variable, percent of Whites in the population, then one could predict the second variable without error. In social science, an "r" of .5 or .6 is considered quite high. An "r" of let's say .2 or .3 would be a mild or a weak relationship. If "r" equals 0, that means there is no statistical relationship between the independent variable and the dependent variable.

I might add that the sign, the direction of the relationship is rather unimportant. For example, a relationship of minus 1.0 would be a perfect negative relationship. Now, in any election, for example, in which we had a relationship of let's say plus .6 between percent White population and percent vote for the White candidate, we would also have minus .6 between percent White population and percent vote for the Black candidate. That's just a statistical certainty that the two would be reversed.

[11] When I calculated "r" for Floyd County for this election, I found it to be plus .832 between percent White in the population by precinct and percent of the votes for the White candidate, Mr. Talmadge. This is a very high correlation coefficient. I might point out this correlation coefficient is not my opinion; this is the correlation coefficient and no matter who calculated it would come out almost with plus .832 for this election. It shows a very high, very strong relationship between White population and voting White.

Q. Other than the correlation coefficient analysis, Dr. Loewen, what, if any, other statistical methods did you subject this data to? A. The second analysis I performed is a straight forward arithmetic exercise. It is called "overlapping percentages analysis." I did this analysis to nail down what percentage of Whites in the county voted White. Overlapping percentages is done by locating or identifying precincts that are extremely high in the first variable, percent White in the population. Then we assume that all of the cross-racial balloting that could occur did occur.

For example, if I take a precinct, Everett Springs precinct, that precinct is 94.4 percent White. Now in that precinct, 97.8 percent of the votes went for the White candidate. 2.2 percent of the votes went for the Black candidate. Now, [12] suppose that all cross-racial balloting that could have taken place did take place. That means we assume that all of the votes for Mr. Jackson came from Whites. That is an unlikely assumption, but we are taking it because we want to be as hard on



ourselves as possible: that is, we wish to compute what is the minimum amount of racial block voting that must have occurred. So we assume that the maximum amount of cross-racial balloting that could have occurred did occur. If all 2.2 percent of the total vote that was for Jackson, if that 2.2 percent came from the White population, then it follows that 94.4 percent of the population being White, that 2.2 percent or 92.2 percent of the population had to have been White and voted White.

I then take that minimum percentage, 92.2, divide by the total White population percentage, which is 94.4, and I come up with a minimum estimate for the percentage of the White population that had to have voted White. In the case of Everett Springs precinct, that percentage is 97.7 percent. Therefore, I can state that the percentage of Whites voting White in Everett Springs precinct is 97.7 percent or more.

Q. Dr. Loewen, let me hand to you a document and ask if you can identify it. A. Yes. I prepared this. These are the minimum percentages of Whites who voted White using the overlapping percentage method for the 11 whitest precincts in the county. [13] The overlapping percentages method is only used for extremely White or extremely Black precincts because that is where it is powerful. There are no extremely Black precincts, and I have listed the 11 whitest precincts.

MR. BRINSON: Excuse me, that last document he referred to is going to be marked Exhibit 4?

MR. MCGRATH: Exhibit for identification, No. 4.

I would like to have it marked as such.

(Loewen Exhibit No. 4 was marked for identification.)

THE WITNESS: Now, I would call your attention to the first precinct, which is 100 percent White. It is, of course, immediately true that 92.4 percent of the Whites in that precinct voted for Talmadge because he got 92.4 percent of the votes in that precinct, and it is nobody voting in that precinct except Whites. Therefore, with certainty, I can state that 92.4 percent of the Whites in Riverside precinct who voted voted White. The other percentages, for example, 87.8 for Alto Park, reading the right-hand column of Exhibit 4, precinct, the minimum percentage of the Whites in that precinct, in this case Alto Park, who must have voted White. The actual probable percentage of Whites voting White would therefore be somewhere between 87.8 percent and 100 percent.

BY MR. MCGRATH:

Q. Dr. Loewen, did you subject the data that we provided [14] to you to any other statistical study? A. Yes. The final statistical analysis I did is called "Goodman Ecological Regression." It is an attempt to be more sophisticated than the overlapping percentages analysis but basically it is an attempt to do the same thing: that is, the Goodman ecological



regression rather than supplying 11 different numbers is based on all of the precincts in the county, including the Town Rome precinct and the rural Floyd County precincts, and using all of them at once comes up with a calculation which provides us with the percentage of Whites voting White in Floyd County as a whole.

I have performed this analysis for the 1968 senatorial primary election that we have been discussing. It indicated that 92.0 percent of the Whites in Floyd County voted White. Now, no statistician can tell for sure that exactly 92.0 percent of the Whites voted White unless, of course, he were within the poll booth with every White voter, and I wasn't. But we can calculate what is called the "confidence interval." The most commonly used confidence intervals in social science are called the 95 percent interval and the 99 percent interval. I prefer to use the more rigid and more accurate 99 percent confidence interval. And I calculated that interval for this guess, this estimate, that I am making with regard to the percentage of Whites in Floyd County that vote White.

When I calculated the stringent 99 percent confidence [15] limit, I found that the interval that is the estimate I would make of percentage of Whites voting White ranged between 88.9 percent and 95.1 percent. Therefore, although I called this an estimate, I am quite confident that between 88.9 percent and 95.1 percent of the Whites in Floyd County voted White.

Q. Did you attempt to calculate the percent of the Black population in the county that voted Black? A. Yes, I did the same

Goodman ecological regression analysis for the Black population and I found that approximately 76.2 percent of the Black population in the county voted Black. That is a high proportion, but it is substantially less than the 92 percent of block voting found among the White population. I would conclude in short, then, that the White population in Floyd County did block vote in this election.

I might point out that all three of these methods of analysis -- the correlation coefficient, the overlapping percentages and the Goodman ecological regression -- came out the same and support each other. For example, my estimate of 92.0 percent for the entire county is very, very close to my certain statement that 92.4 percent of the Whites in Riverside precinct voted White: that being the 100 percent White precinct.

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Q. Dr. Loewen, what relevancy, if any, would your finding with respect to Floyd County have with respect to the city of Rome? [16] A. Well, I would first point out that, of course, Rome is part of Floyd County and a substantial part in terms of population; that it makes up four or five of the voting districts; that if Rome behaved differently from the county as a whole, this behavior would have been enough to throw off the correlation coefficient or the Goodman ecological regression estimate. So I feel confident that Rome behaved similarly to the county analysis as a whole and that therefore the citizens of Rome are participating, particularly the White citizens, in racial block voting.

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Q. Dr. Loewen, let me ask you this: What impact, if any, would racial block voting have? A. Well, in an election in Floyd County or Rome characterized by racial block voting, victory by a Black candidate would be essentially impossible because if Whites are block voting and Whites make up a population majority in both the county and in the town of Rome, then it would be impossible for Blacks to win an election. Therefore, the effect of racial block voting upon Black political participation would be to cut it down because Blacks would know that Whites are block voting. I am sure these statistics, although they are perhaps not scientifically analyzed within the county, I am sure they are known offhandedly to every resident of the county who is politically informed; and therefore, any Black resident would be aware that there is a certain paradox involved in political !171 participation: namely, it is unlikely to be successful.

Q. Is this just your opinion, Dr. Loewen, or an opinion shared by others? A. No, this is my opinion based on my analysis of this community and of other counties throughout the South; and it is also rather standard opinion. For example, the most common and widely cited book on the subject of political participation in America is in fact called "Participation in America." It is by Sidney Verba and Norma Nie, a 1972 publication; and they state that Blacks in the South participate less than Blacks in the North even when social class is controlled for. They state, and I quote: "Clearly this reflects the fact that historical legal discriminations against Blacks voting in the South still make a difference."

They also examine the relationship between Black voters or non-voters and elected officials in the South, and they find that Blacks feel less able to contact local officials and that contacting local officials would be less efficacious for them. They conclude, and I quote: "The data add up to a picture of frustration for Blacks."

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CROSS EXAMINATION

BY MR. BRINSON:

[28] Q. Would you say that in statistics, Dr. Loewen, can one race indicate a trend? A. Yes. That is partly because of the power of the three different statistical analyses that I subjected this race to. In other words, the findings of racial block voting in this election were not mild and they were not my opinion; they are in the data. If anyone else calculated the overlapping percentage analysis or any of the other two statistical analyses as I did, they would come out with exactly the same conclusion.

Q. That conclusion is that Whites voted White? A. That's right.

Q. But not that racial block voting exists in the city of Rome? A. Well, Whites voting White is certainly at least [29] half of what we mean by "racial block voting."

Q. At least half. What is the other half? A. Blacks voting Black; and Blacks did vote Black, 76 percent of them--not as high a percentage as of the Whites.



Q. Do you consider any other factors other than statistics when you opine as to the existence or not of racial block voting? A. Racial block voting is an emperical and statistical question. I looked to see whether it occurred, and the two races involved are the White and the Black. If the Whites voted White, that is to me a definition of part of racial block voting; if the Blacks voted Black, that is a definition of racial block voting.

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[33] Q. Dr. Loewen, were you given any figures of any other elections in Floyd County or the cty of Rome? A. Yes.

Q. What elections? A. I don't remember them by name. There was one election, for example, in which all of the citizens of Rome voted at one precinct, so that there seemed to be only one case. There was another election of a Republican primary.

Q. Do you remember when the last one was that you mentioned? A. No, I don't.

Q. Rev. Hill ring a bill with you, in 1970? A. Was that the election in which -- for school board?

Q. Yes. A. Yes.

Q. That's the one? A. Well, in that election I believe there was either one or four voting places. In either case, four is not enough [34] voting places to allow me to subject the data to a statistical analysis.

Q. But five are? A. Well, five or six might be, particularly if there is a wide variation in the percent White or the percent Black at those five or six various polling places. If you have, for example, one polling place, it is obviously no way for me, since I wasn't there, to determine how the Whites voted versus how the Blacks voted. If you have exactly two polling places, even if one of them is predominantly Black and the other predominantly White, the correlation coefficient, for example, cannot be calculated, because what the correlation coefficient amounts to is -- if we could visualize it -- is this: We place all of the different precincts on a scatter diagram. We set up a simple graph paper with percent White in the population going across the bottom, percent White vote going along the side or going up. And we put a dot for each precinct. Now if the precinct is low in percent population that is White, then it would be towards the left; and if it were low in percent of votes for White candidate, then it would be towards the bottom. If there was a relationship between those two variables, we would expect the dots then to move up and to the right in an ordered straight line.

The correlation coefficient tells us how close we are, how close those dots are to such a straight line. If you had [35] just two precincts, you would have -- let's say one of them were largely White and the other one were very small in percent White, you would have only two dots. And regardless of where they fell with regard to vote for the White candidate, a straight line could be drawn between those two dots and the rest of the dots would not deviate from that straight line because there



would be no other dots if we only had two precincts, of course. So therefore the correlation coefficient is trivial in the case of two precincts.

It will always come out 1.0 or minus 1.0. Similarly, for three or four precincts, you could immediately see that -- you can draw a line, let's say for three precincts that would go through two of the dots and the third dot might be fairly close; and if it were, it would look like a high correlation coefficient. It would look like we really proved something, but since only three or four dots are involved, that high correlation coefficient was partly caused by the fact that you are determining the line with so few dots, so it would not be fair; it would imply a high block voting even though you didn't know it. That is why to really analyze block voting you need five or six cases at the absolute minimum, and that is enough only in the case where you have rather disparate percentages of White in the population. It is much better to use 10 or 12 or 15 cases.

Q. What other elections did you consider? [36] A. Well, I don't know the elections by name because I considered them and rejected them and therefore didn't study them. I remember one. There was a Republican primary in which there were two or three hundred, I believe, votes cast in the entire primary, and, of course, with that few votes cast, they could have all been cast by Blacks, let's say, or all have been cast by Whites, so few votes involved that that would be trivial. So I didn't analyze it; it would be misleading.

Q. Well, you said it would be trivial. Would it be irrelevant? A. Yes.

Q. Absolutely irrelevant? A. To the question of racial block voting in the county?

Q. Yes. A. I think so, because you don't have the county voting in such a selection. You have such a tiny fragment of the county population that was voting that I certainly didn't bother to attempt to ascertain how the tiny fraction voted.

Q. Not in the county. We are talking about the city of Rome. A. Yes.

Q. You have indicated -- A. Two or three hundred votes is a trivial proportion of the city's voting population. So if I found racial block voting, I would not attempt to generalize from the election of [37] only 300 votes or so.

Q. If it was inconsistent with your finding of racial block voting, what if it indicated that racial block voting in that particular race did not exist; would it be irrelevant? A. Yes, it would be irrelevant because it is based on such a tiny vote total. You see, we wouldn't even be able to ascertain that -- let's imagine we had a precinct which we don't even have, a precinct that was 95 percent Black with this Republican election of just a few hundred votes. Such a precinct might have, let's say, 30 or 50 votes correct? And all of those votes, even in the 95 percent Black precinct, might have come from the White voters in the precinct because there is so few votes that they do not



represent any significant proportion of the voters.

Q. So what you are saying is that it cuts down on the reliability but it doesn't nullify the reliability, does it? A. An election of 300? Well, I suppose that I would be overstating it to say it nullifies it.

Q. So it would be another factor, whether a substantial one, it would be another factor that could be considered. A. It could be considered. It would be of minimal importance.

Q. And you did not consider it? A. I did not consider it.

Q. That Republican race was a local election in the city [38] of Rome, too was it not? A. I don't remember. When I saw the vote total, I had no further interest in it, and I don't remember.

Q. Do you know whether or not it was for Rome City Commission? A. I don't.

Q. You do know that it was not a federal election of such for the United States Senator? A. I don't think so, but I just don't remember what the contest was.

Q. What other elections did you review? Excuse me, let me ask you: That Republican primary was, you did know it was between a White and Black candidate, did you not? A. I believe that counsel for the Justice Department told me that, but at this time I don't even remember that for sure.

Q. What other elections did you consider? A. I believe I rejected one or two others. I don't remember what other. I rejected at least one for which there was exactly one precinct, and I don't remember what election that was; but I would have rejected any election for which there was one precinct because the statistical analysis cannot be attempted for each election.

[40] Q. Did you consider the factor that the United States Senate election was a federal election as opposed to a Rome City Commission or Rome Board of Education local election? A. In my analysis in, for example, Forest County, Mississippi, I found that elections behaved similarly whether they were the local Forest County segment of a state-wide or a larger election or whether they were for County Board of Supervisors or justice of the peace. Therefore, I had no apriori reason to assume that this senatorial primary would be an instance or would not be an instance of racial block voting compared to a local election.

Q. But you didn't investigate that? A. I investigated this election to see whether there was racial block voting. I didn't investigate any other election. It was alleged to me that there was no other election in which a substantial number of precincts existed where a Black and a White candidate squared off and a substantial number of votes were cast.

Q. Well, that didn't make any difference to you anyway, though, I believe you testified. A. That is exactly what made the difference. That is why I did not investigate other elections that were discussed with me.



Q. Because -- A. Because those three conditions did not obtain.

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[41] Q. You have in making your findings of block voting made the determination as to Floyd County; is that correct? A. Yes.

Q. And you find that block voting exists in Floyd County? A. That's correct.

Q. Based upon your review of election results of one election in the 24 voting precincts in Floyd County. [42] A. Yes.

Q. And how did you get from that stage to finding that racial block voting exists in the city of Rome? A. If racial block voting -- well, I can state racial block voting existed in the city of Rome for that election because if it did not, then the correlation coefficient for the county would have been much lower and the Goodman ecological percentage which calculates the percentage of Whites voting White for the county would have been much lower. So my first reason for saying that is because Rome is part of, an important part of the totals for Floyd County. Secondly, in my experience of doing ecological voting analysis in Mississippi and elsewhere, I have virtually always found it to be the case that contiguous districts show similar patterns, and this case we are not even talking about contiguous districts; that is, we are not saying that Rome is contiguous to Floyd County, but it is subsumed within Floyd County. So I believe it is for this reason also a reasonable inference.

[45] Q. Now, you stated I believe if Rome behaved differently in an election from Floyd County as a whole, it would flow off the findings of the two analyses that you did. A. That's correct.

Q. What are those two analyses? A. The first and third: the correlation coefficient and the Goodman ecological regression analysis.

Q. And in that connection, what did you do to investigate if Rome did behave differently or would have likely behaved differently? A. Nothing. I didn't have to. The correlation coefficient was quite high and the Goodman ecological regression calculation for percent White was quite high.

Q. For Floyd County? A. That's correct. But my statement was if Rome behaved differently from Floyd County including Rome, then those numbers could not have been high. You want me to explain that?

Q. Yes. A. It is mathematically impossible that they could have been high. We could go back to my imagery of the graph paper with a whole bunch of dots going from low percent White to high percent White in the population.

The Rome precincts are comparatively low in percent White compared to these 80 and 90 percent White precincts and 100 White precincts that are found outside of Rome. If they [46] behaved differently than the precincts outside of Rome, then a straight line that was drawn to connect or come near to the dots coming from Floyd County outside of Rome



would be nowhere near the dots from Rome itself. They would lie somewhere off that line. For example, since they are rather low, several of them, in percent White, they would be presumably not similarly low in percent vote for Talmadge. They would either be much lower or much higher and in some way they would be off of the line. If they deviated from that line, then the correlation coefficient would not come up to be extremely high as it did because that is what it is a measure of.

Q. And that is applicable to that particular election? A. Yes, that is what it was calculated as a result of. [58] I can state that in the 1968 election Rome racially block voted and Floyd County racially block voted.

RE-DIRECT EXAMINATION

By Mr. McGrath:

[65] Q. Let me ask you something, Doctor. I ask you which of the following statements would you say is more accurate or reflects the truth if you were making the statement: In my opinion, in the 1968 election Whites in Floyd County voted for Talmadge and Blacks in Floyd County voted for Jackson. In the 1968 election Rome voted along racial lines. A. Both of those statements are true, I believe. I would state both of them except I would qualify the second statement by pointing out I testified that I believe 76 percent would be my estimate of Blacks voting for Jackson in either Floyd County or -- that would be my best guess for Floyd County or for Rome.

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